

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MISSOURI STATE CONFERENCE OF THE)
NATIONAL ASSOCIATION FOR THE)
ADVANCEMENT OF COLORED PEOPLE,)
REDDITT HUDSON, F. WILLIS JOHNSON,)
and DORIS BAILEY,)
)
Plaintiffs.)
v.)
)
) No 4:14-CV-2077 RWS
FERGUSON-FLORISSANT SCHOOL)
DISTRICT, and ST. LOUIS COUNTY)
BOARD OF ELECTIONS COMMISSIONERS,)
)
Defendants.)

BENCH TRIAL - VOLUME II
BEFORE THE HONORABLE RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE
JANUARY 12, 2016

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(PROCEEDINGS STARTED AT 9:07 AM.)

THE COURT: Morning. Any announcements before we begin this morning? All right.

Mr. Rothert, if you would call your next witness.

MR. ROTHERT: Just prior to calling our next witness, we would like to ask the Court to take judicial notice of Missouri Revised Statute Section 1.100 regarding population for the purpose of representation of Missouri being measured by the last decennial census. I have a copy of the statute.

THE COURT: Thank you.

Any objection?

MS. ORMSBY: No objection, Your Honor.

THE COURT: Very good. Court will take judicial notice of Missouri Revised Statute 1.120 -- actually 1.100.1.

MR. ROTHERT: Yes. And since we're doing that, we'd also ask the Court to take judicial notice of Missouri Revised Statutes Section 610.021, which governs the permissive closure of certain meetings and records.

THE COURT: Any objection?

MS. ORMSBY: No objection, Your Honor.

THE COURT: Court will take judicial notice of the Missouri Revised Statute.

MR. ROTHERT: And one final matter just to clarify for the record. Yesterday we offered Mr. William Cooper as an expert, and there was an objection to him being an expert.

1 Obviously, he gave opinions, but --

2 THE COURT: He did give opinions.

3 MR. ROTHERT: So we just wanted to clarify. There
4 had been an objection to him being considered an expert
5 witness. We wanted to see if that issue has been resolved and
6 he's been accepted as an expert or if --

7 THE COURT: I'm going to reserve ruling on that until
8 the conclusion of the trial. Don't panic. Probably goes more
9 to the weight, the discussion about -- I mean, you can be an
10 expert not just on education but on experience. Obviously, he
11 has a substantial amount of experience, nobody is going to
12 deny that. An interesting background. Not a traditional
13 expert background.

14 But if you've been in the St. Louis legal community
15 for any length of time at all, Boulter Kelsey was an expert on
16 anything. Told him what you wanted. He would go out and
17 figure it out and come back and be an expert; so . . .

18 MR. ROTHERT: And often accepted by the court.

19 THE COURT: But often -- but sometimes marginalized,
20 sometimes not. But we will have a lot of legal issues, I
21 suspect, at the end of the trial, and I'm not going to
22 forestall a further discussion about that.

23 MR. ROTHERT: Okay.

24 THE COURT: But I didn't want you to think that my
25 reserving it meant that I was going to eliminate him. I mean,

1 we're in a unique position. I can evaluate it on a number of
2 levels.

3 MR. ROTHERT: Very well. So I think we're ready to
4 call our first witness.

5 MS. LAKIN: Good morning, Your Honor. Sophia Lakin
6 on behalf of the plaintiffs. At this time, plaintiffs call
7 Mr. Charles Henson.

8 THE COURT: If you would step forward, sir, and be
9 sworn.

10 **(WITNESS SWORN BY THE CLERK.)**

11 MS. LAKIN: I'm going to hand the witness a document
12 marked as Plaintiffs' Exhibit 116 to take with him on the
13 stand.

14 THE COURT: Very well.

15 Are you ready? You may proceed.

16 **CHARLES HENSON,**
17 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**
18 **FOLLOWS:**

19 **DIRECT EXAMINATION**

20 **BY MS. LAKIN:**

21 Q Good morning, Mr. Henson. Can you please state your name
22 for the record?

23 A Charles Henson.

24 Q Where were you born?

25 A St. Louis, Missouri.

1 Q Where do you live?

2 A I live in Ferguson, Missouri.

3 Q Do you reside within the Ferguson-Florissant School
4 District?

5 A Yes, I do.

6 Q Did you have an opportunity in this case to execute a
7 declaration or affidavit?

8 A Yes.

9 Q Can you please look at the document I handed you as you
10 took the stand, which has been marked for identification as
11 Plaintiffs' Exhibit 116. Do you recognize this document?

12 A Yes, I do.

13 Q What is this document?

14 A It is the declaration that I --

15 Q Did you sign this document?

16 A Yes, I did.

17 Q Did you have an opportunity to review this declaration
18 before you signed it?

19 A Yes, I did.

20 Q Were each of the statements in this declaration true when
21 you signed it?

22 A They were, yes.

23 Q Have you recently had an opportunity to review each of
24 the statements in this declaration?

25 A Yes, I have.

1 Q And are each of the statements in your declaration still
2 true?

3 A Yes.

4 MS. LAKIN: Your Honor, I'd like to move to admit
5 into evidence Plaintiffs' Exhibit 116.

6 THE COURT: Any objection?

7 MS. ORMSBY: No objection.

8 THE COURT: Received without objection.

9 Q (BY MS. LAKIN) For how long after you were born did you
10 live in St. Louis city?

11 A I lived in St. Louis city from K through eighth grade.

12 Q Where did you -- when did you first move to the district?

13 A I moved into the district in 1973.

14 Q Where did you live when you first moved to the district?

15 A I lived in the -- in Kinloch, but in the unincorporated
16 area of St. Louis County. That was inside the district of
17 Ferguson-Florissant.

18 Q How long did you live in this unincorporated part of
19 Kinloch?

20 A I was there -- we moved into Ferguson in '75; so
21 approximately two years.

22 Q And how many years have you been a resident of the
23 district?

24 A Since '73. So that's quite a long time, I guess.

25 Q Did you attend a school in the district?

1 A Yes. I attended Ferguson Junior High and then McCluer
2 High School, where I graduated.

3 Q What was the racial composition of Ferguson Junior High
4 while you attended?

5 A There was probably 5 percent African-American population
6 at best.

7 Q And the rest of the population?

8 A I would say it would be 95 percent white.

9 Q What about the racial composition of McCluer High School?

10 A We were probably -- African Americans probably 10
11 percent; 90 percent white at the time.

12 Q What was the approximate demographic breakdown of the
13 administrators and teachers in the district while you attended
14 schools there?

15 A I would say 98 percent white.

16 Q While you were growing up in St. Louis city and the
17 Ferguson-Florissant School District, did you experience any
18 racial discrimination or segregation?

19 A Yes.

20 Q Can you give us some examples?

21 A Well, one of the things -- I was an athlete. So playing
22 on certain sports teams there were just some unwritten
23 positions and things like that on the football field that they
24 just -- they were not for minorities. You couldn't -- there
25 was no pitchers on the baseball team. No quarterbacks on the

1 football team. There was -- some of the things that I
2 experienced in the classroom, my fellow white students, they
3 would tell me that "Charles, we can be friends at school, but
4 you can't come to my house. My parents would forbid it."

5 And then there was experiences that I had as well.
6 We attended -- one night there was a party at a young lady --
7 she was a cheerleader, a white cheerleader, at her home. And
8 me and another African-American football player, we walked
9 into the house, and her parents were sitting in the kitchen,
10 and they asked us -- the party was going on in the basement,
11 and they asked us what were we there for.

12 We said, "The party."

13 And the parents said, "Not for you." So that was
14 just among several things.

15 Q And what about your experience as a student in the
16 classroom?

17 A Well, one of the things is that growing up in the city,
18 the K-through-eighth-grade experience that I noticed the
19 difference when I got to Ferguson-Florissant was the missing
20 part of the nurturing part of the classroom. The teachers and
21 educators in St. Louis City School District, I think, cared a
22 great deal more about my personal achievement. When I got to
23 Ferguson-Florissant, it seemed to me more of I was just
24 another number.

25 Q And what was the racial composition of the teachers and

1 administrators of the school that you attended in St. Louis
2 city?

3 A It was probably -- of the administrators?

4 Q And teachers.

5 A And teachers. I would say 98 percent African American.

6 Q What is the approximate current demographic breakdown of
7 the district student body today?

8 A I don't know exactly, but I would assume that the
9 African-American student body is probably in the 80
10 percentile.

11 Q Eighty percent? I'm sorry.

12 A Eighty percentile. Somewhere in the 80 percent, mid 80
13 percentile, African-American student body.

14 Q And what is the approximate current breakdown of the
15 administrators and teachers in the district today?

16 A I would say just the opposite. I would think that the
17 administrators are probably somewhere in the 80 percent white.

18 Q Do African Americans in the district continue to suffer
19 the effects of discrimination today?

20 A I think so because, I mean, we just look at the evidence
21 of what's happened in the last year and a half in our district
22 area in the city of Ferguson with regard to the Department of
23 Justice report and to look at the -- some of the blatant
24 racial issues that still exist inside our community.

25 Q Are you first generation of your family to reside in the

1 district?

2 A No.

3 Q Who else in your family has lived in the district?

4 A We go back quite a ways. Four generations of my family
5 have lived in the district. My grandfather moved to Kinloch
6 in the early 1900s. My mom obviously was born and raised in
7 Kinloch. And so then myself and my children. So we've been
8 here for four generations.

9 Q And did your mother attend a school in the district?

10 A Yes and no.

11 Q Can you explain what you mean by that?

12 A She attended elementary school, started out in a one-room
13 building somewhere in the city of Ferguson off of Florissant
14 Road, and then the district built Vernon Elementary School
15 inside Kinloch for the black students.

16 Q What about for high school? Did she attend a school
17 within the district?

18 A She could not attend Ferguson High School; so she had
19 to -- at 12 years old, she had to take public transportation
20 to Webster Groves to attend Douglass College -- Douglass High
21 School, I'm sorry.

22 Q And why could she not attend the high school in the
23 district?

24 A The Ferguson-Florissant District at that time was
25 segregated; so it would not allow black students in the

1 district.

2 Q And you mentioned that she had to take transportation to
3 Webster Groves. How did she get to --

4 A They called it the streetcar, and that was
5 transportation, the mode.

6 Q And how long did it take her on the streetcar?

7 A Probably over an hour, I would guess, because right now
8 just to drive to Webster Groves from Ferguson is a 20-,
9 30-minute drive. So on a streetcar with public
10 transportation, hour to two hours, I would think, every
11 morning.

12 Q And how old was she when she started taking the streetcar
13 to the school in the other district?

14 A My mom was 12 years old because she had received a double
15 in one of her classes; so she was a young student.

16 Q Do you have any children? You mentioned you had
17 children.

18 A Yes.

19 Q And how many children do you have?

20 A I have two children. My daughter is the oldest, and my
21 son is obviously younger.

22 Q Did your children attend schools within the district?

23 A Yes. They both attended Lee Hamilton Elementary School
24 and then on to graduate from McCluer High School.

25 Q And when did they graduate?

1 A My daughter graduated in 2008, and my son graduated in
2 2012.

3 Q What is your current occupation?

4 A I'm the project director of the Minority Business
5 Development Agency Business Center here in St. Louis.

6 Q What is the Minority Business Development Agency Business
7 Center?

8 A Certainly. The MBDA is a federal agency under the
9 Department of Commerce, and it is the only federal agency with
10 the main objective of growing and developing existing
11 minority-owned businesses. So there's 44 centers around the
12 country. I run the center here in St. Louis.

13 Q And how long have you run the center in St. Louis?

14 A For just over three years.

15 Q Where did you work prior to your current role as a
16 project director for the Minority Business Development Agency
17 Business Center?

18 A Certainly. I spent one year with McCarthy Building Group
19 as the -- a new position they created for me, director of
20 community relations. That position came to me because prior
21 to that I had run my own business called Design Alternatives
22 for nearly 20 years, and my relationship with the McCarthy,
23 when I closed my company, asked me to come to work for them.

24 Q And what did you do in your role as director of community
25 relations at McCarthy Building Group?

1 A Part of -- there was a cadre of responsibilities. One
2 was cultural change internally. So I developed and
3 facilitated diversity training. I also became McCarthy's
4 representative in the public eye. I would go and represent
5 them in certain functions and with regard to other
6 organizations. I handled volunteerism throughout the
7 community and aspects like that.

8 Q What kind of internal trainings did you facilitate?

9 A Diversity was the training that I did for new employer
10 orientation. So all of their employees nationally came to St.
11 Louis because the headquarters is here. So throughout the
12 year there was at least four or five different orientations,
13 and during that process I would facilitate the training on
14 cultural acceptance and inclusion.

15 And I did training also with regard to four
16 generations in the workplace, also a part of helping employees
17 and managers work together closer, closer together.

18 Q And what services did you provide -- did your business
19 provide, Design Alternatives?

20 A Sure. We were an employee consulting firm for the most
21 part, temporary and permanent placement for technical
22 professionals, and then we did training and development as
23 well.

24 Q What kind of training and development did you provide?

25 A We provided personal and professional skills training

1 for -- primarily for corporations and institutions, training
2 like conflict resolution, team building, diversity, sexual
3 harassment, things like that.

4 Q Did you attend college?

5 A Yes. I graduated from Washington University with a
6 bachelor's degree in architectural technology.

7 Q Have you been a part of any community organizations or
8 associations?

9 A A number of associations and organizations. Most
10 notably, I chaired the PROUD Group in Ferguson from 1995 to
11 approximately 2006 -- '11. PROUD: People Reaching Out for
12 Unity and Diversity. We started. And that particular
13 organization started a discussion and continued the discussion
14 on race and equity and promotion of diversity in the community
15 of Ferguson. In actuality, we also tried on two attempts
16 the -- mayors of Florissant approached me to try and put
17 together a PROUD group in the city of Florissant. However,
18 they just -- they couldn't keep it going.

19 Then I served on the board of a nonprofit. I served
20 on a number of boards for the City of Ferguson. I helped to
21 hire a number of city administrators on public review boards
22 and things like that.

23 Q Can you give us some examples of how you continued the
24 discussion of diversity as a member of PROUD?

25 A Certainly. We did a number of -- every month we met, and

1 throughout the year we had workshops and guest speakers, and
2 we held an annual dinner. We participated in all of the
3 annual parades and ceremonies. We started a welcoming --
4 neighborhood welcoming committee. Just a number of -- host of
5 things that continued the dialogue.

6 Q What was your role within PROUD?

7 A I was the chair. So all the responsibilities fall on the
8 chair. So when they saw Chuck Henson coming, they knew
9 exactly what was -- the conversation was going to be about,
10 because I truly believe that we are all blessed and born by
11 the same creator; so why shouldn't we get along?

12 Q And how long were you chair of PROUD?

13 A 2011 we kind of ceased the regular meetings, things like
14 that; so from 1995 to 2011.

15 Q Have you served on any school district committees?

16 A I served on a number of committees even prior to being on
17 the board. I served on the finance committee, which was --
18 they had convened a group of public citizens to be part of
19 this board, the technology committee. And there was a host of
20 committees. Even going back probably several superintendents
21 had asked me to participate on other things like that, that
22 where they brought the public in to be a part of some of those
23 committees.

24 Q Were these volunteer positions?

25 A These were volunteer.

1 Q And were you involved in school district activities in
2 any other capacity while your children were in school?

3 A Oh, definitely. I was on the PTO, PTA meetings -- so
4 much so that my children -- and because my business was also
5 located in Ferguson for 17 years, and so in the school
6 district I was so involved with -- on some of these committees
7 that my children would tell me, "Dad, look, if my principal
8 says 'I'm going to tell Chuck on you if you don't get things
9 together,'" it was something. So I was heavily involved.

10 Q Much to the chagrin of your children?

11 A That's exactly right. They were not happy.

12 Q Are you registered to vote?

13 A Yes.

14 Q And where are you registered to vote?

15 A In the city of Ferguson.

16 Q Do you vote in district school board elections?

17 A Yes.

18 Q How regularly do you vote in board elections?

19 A I can't remember when I missed.

20 Q In board elections where you can, if you choose, cast
21 more than one vote, have you ever forgone casting one or more
22 of the votes you were entitled to cast?

23 A Yes.

24 Q When did you do that?

25 A Certainly once for myself and then once for Courtney

1 Graves.

2 Q Why did you cast only one vote for Courtney Graves in
3 2015?

4 A There was two options. However, I felt that she was the
5 better option, and I didn't feel comfortable with the other
6 candidate. So I felt that that was in the best interest.

7 Q Do you recall ever forgoing casting all of your votes in
8 a board election in other years?

9 A Oh, yes.

10 Q In what other years?

11 A Casting all of my votes?

12 Q No. Casting just -- not casting all of your votes.

13 A Not casting. No. No.

14 Q Have you served on the Ferguson-Florissant School Board?

15 A Yes.

16 Q For how long?

17 A From 2007 to 2013.

18 Q When you first began your board service in 2007, were you
19 elected to the school board?

20 A No. I was actually appointed to the board because a
21 current member had decided to vacate her position, and I was
22 then appointed for -- from January to the April election.

23 Q Can you describe how you came to be appointed to the
24 board?

25 A I think it was a selection process, superintendent and

1 several board members. I remember Doris Graham was on that
2 board at the time as well. And I think I went through an
3 interview process with them, and they decided and asked me to
4 hold that position until the election process.

5 Q And in what years were you up for reelection?

6 A 2007, 2010, and '13.

7 Q Did you face any challengers in 2007 or 2013? Or 2010,
8 I'm sorry.

9 A No. Unopposed.

10 Q Was a board election held in either of those years?

11 A I don't believe so.

12 Q Did you face challengers in 2013?

13 A Yes.

14 Q Was a board election held in 2013?

15 A Yes.

16 Q Was that the first time you stood for election for the
17 school board?

18 A Yes.

19 Q Were you successful in 2013?

20 A No.

21 Q Who won that election?

22 A That election was won by Leslie Hogshead, an incumbent,
23 and then a virtual unknown, Mr. Keith Brown.

24 Q What race is Keith Brown?

25 A Keith Brown is white.

1 Q What race is Leslie Hogshead?

2 A She's white.

3 Q Other than you, Keith Brown, and Leslie Hogshead, were
4 there any other candidates in the 2013 election?

5 A Yes. There was a Mr. Larry Thomas. However, for some
6 reason he was on the ballot, but he did not run a campaign at
7 all.

8 Q What do you mean by that?

9 A There was no -- he didn't participate in any of the
10 forums. He didn't put out any campaign literature or signage.
11 So he was on the ballot. I don't know why.

12 Q When you were first appointed to the board, were there
13 any other African Americans serving?

14 A Yes, one. Ms. Doris Graham.

15 Q During your time on the board, were there ever any
16 African-American board members other than you and Ms. Doris
17 Graham?

18 A No.

19 Q Was there ever a time during your service on the board
20 when you were the only African-American board member?

21 A Yes.

22 Q When was that?

23 A That was following the 2011, I believe, election; so from
24 2011 to 2013.

25 Q When you lost your election in April 2013, were there any

1 African Americans serving on the board?

2 A No.

3 Q When you first ran for the school board in 2013, how did
4 you conduct your campaign?

5 A Basically -- I mean, we did everything that you normally
6 do. We formed a committee. We had a treasurer, a campaign
7 manager. We provided -- we participated in the forums. We
8 did canvassing, did printed literature, signage, meet and
9 greets, fund-raising events. The typical process.

10 Q Did you seek any endorsement?

11 A And we sought endorsements as well.

12 Q Did you fill out a League of Women Voters questionnaire?

13 A I believe someone in my campaign did, yes.

14 Q Now, you mentioned that you sought endorsements. Whom
15 did you seek endorsements from?

16 A I think the other was the FFNEA as well.

17 Q And what does FFNEA stand for?

18 A That is the union, the Ferguson-Florissant National
19 Education Association.

20 Q Does the FFNEA regularly endorse candidates for school
21 board?

22 A My knowledge is -- my experience has been that every
23 campaign they do offer the endorsements to.

24 Q And what is the process by which FFNEA chooses candidates
25 to endorse?

1 A Well, one of the things is we -- once you are granted the
2 opportunity, then to be considered you go before a panel of
3 folks and there's an interview process, and that's what
4 happened; so . . .

5 Q And how do you come to be granted an opportunity to be
6 interviewed?

7 A I guess -- and then you -- they let you know within a
8 relative amount of time whether or not you're going to be the
9 endorsee, you're going to be endorsed. But there's no -- I
10 don't know what actually they use to decide.

11 Q How do you come to be invited for an interview with the
12 FFNEA?

13 A There's a form that you fill out and, I think, submit. I
14 don't recall the whole process.

15 Q To your knowledge, does the FFNEA publish the criteria by
16 which it determines whom to endorse?

17 A No. And I asked, but no.

18 Q Did you interview with the FFNEA?

19 A Yes.

20 Q Did you receive FFNEA endorsement?

21 A No.

22 MS. ORMSBY: Your Honor, I'm going to object to the
23 leading questions.

24 THE COURT: I will give you some latitude, but try
25 not to lead.

1 Q While you were on the board, did other African-American
2 candidates receive FFNEA endorsement?

3 A Not that I know of, no.

4 Q Do you know why the FFNEA did not endorse you?

5 A I have no idea.

6 Q In 2013, when you ran, did the FFNEA endorse any other
7 candidates? Any candidate?

8 A Yes, they did. The two, Leslie Hogshead and Keith Brown.

9 Q Does the FFNEA -- how does the FFNEA promote the
10 candidates they endorse in an election?

11 A Through campaign literature. They have -- they help out
12 at the polls. They provide -- I think they provide a stipend
13 as well; so advertisement. And certainly make it publicly
14 known who their candidates are.

15 Q And when you say they make it publicly known who their
16 candidates are, what do you mean by that?

17 A Through written literature, through the campaign, through
18 the polling. It's evident when you walk up to a poll.
19 They've said who the two candidates are they're supporting.
20 So it's when you come to vote, you know exactly who the union
21 is supporting.

22 Q So when you say the two candidates that the union is
23 supporting, what do you mean by that?

24 A Who they have selected to endorse.

25 Q Did the other board members support you during your 2013

1 campaign?

2 A No. None of the other board members. And that was
3 disappointing. But there was one particular situation to
4 where, actually, the then president, Paul Morris, of the board
5 actually held a fund-raising event for Mr. Keith Brown at his
6 house. And certainly individually you have the autonomy to do
7 whatever you like, but he actually put on the invitations that
8 he was the president of the school board. And to me, that was
9 certainly disrespectful. That was probably somewhat illegal,
10 but -- because we're not supposed to endorse anyone as the
11 board.

12 Q Did any board member support you during the 2013
13 campaign?

14 A Certainly. Mr. Paul Schroeder.

15 Q In your view, what is the role of the school board?

16 A The school board -- there's a number of things that we --
17 certainly set policy, governance. We do -- if you're in a
18 situation where we hire a superintendent, not always is that
19 the case, but certainly that is the employee of the district.
20 But even more so the school district -- I mean the school
21 board sets -- has to set examples for an oversight somewhat to
22 the goals and things that we establish every year as a school
23 board.

24 And so the administration and the teachers -- they
25 kind of look up and have a great deal of respect for the board

1 members. So we care not only -- we carry not only just the
2 policy and governance side of it, but also we have to set
3 examples and role models, because we have to approve
4 curriculum, we have to approve budget expenditure and things
5 like that; so . . .

6 Q What were your priorities when you were on the school
7 board?

8 A Well, just things that I just talked about; plus we
9 were -- in 2007 the Black Leadership Roundtable challenged a
10 number of the -- all of the, I think, metropolitan districts
11 to look at their issues with regarding to race in the
12 classroom. And certainly we -- Ferguson-Florissant -- did
13 that. And that was always obviously, going back to PROUD, the
14 things that were important to me as well. So the school
15 district took on that responsibility, and so we were -- I
16 think we were really poised at how do we embrace diversity in
17 our district and to make that environment more inclusive.

18 Q Can you give us some examples of how the board embraced
19 diversity?

20 A Certainly. We created an organization, created a
21 committee inside the district called HAFA, High Achievement
22 For All, which included administrators, teachers, bus drivers,
23 every department, every employee, and then we also brought in
24 the public as well was a part of that. For the first year, we
25 met as a group to look at issues of diversity and the

1 embracing of different cultures and how we would create an
2 environment that was just more inclusive. And then after
3 about a year, we -- every school building was asked to develop
4 its own HAFA team and to continue that aspect and inviting in
5 the certainly not only the administrators and employers, like
6 I said, but also the outside public as well.

7 So it was just -- and there was a lot of training
8 going on. We brought in some of the world-renowned training,
9 Sharroky Hollie, John Singleton. And every administrator,
10 teacher, every employee went through diversity training.

11 Q Did the board play a role in HAFA?

12 A The board participated. The members were a part of the
13 HAFA teams. We participated in the meetings. We had to set
14 the example. There was no way we could have asked the
15 administrators and the teachers to go through what they had to
16 be involved with without being -- certainly set the example.

17 Q Were there any other ways in which you, as a board
18 member, advocated for the priorities of embracing diversity
19 while you were on the board?

20 A Certainly. I also talked openly at board meetings about
21 the importance of our hiring practices, to look at -- I talked
22 about the hiring of minority contractors for work that was
23 being done and let -- in the school, you know, different
24 maintenance roles and things like that.

25 Q What effect, if any, did these priorities related to

1 diversity and race and your support of these initiatives have
2 on your 2013 board campaign?

3 A You know, I think sometimes being -- talking about issues
4 of sensitivity like race and the importance of embracing
5 diversity and importance of talking about those issues
6 sometimes will alienate some people and to the point of,
7 during my campaign in 2013, people were saying that -- there
8 were some said that Chuck Henson was a racist.

9 Q And why were you called a racist?

10 A I think because of my opinion and my outwardly outspoken
11 dialogue about how important it is for us to be -- as a
12 majority-minority district and with the difference of
13 disparities of administration to student body, I think it was
14 just so important. So I've never shied away from what I
15 thought was right.

16 Q When you say "majority-minority district," what do you
17 mean?

18 A The majority of our district, the student body.

19 Q Based on your experience, is being outspoken about
20 diversity and racial bias a liability if you're a board
21 candidate?

22 A Say the question again. I'm sorry.

23 Q Based on your experience, is being outspoken about
24 diversity and racial bias a liability as a board candidate?

25 MS. ORMSBY: Objection. Leading.

1 THE COURT: Overruled.

2 A Yes, I think it is. And I think some members -- I think
3 because we have to be careful during the campaign process of
4 not having -- having people to understand exactly where we're
5 coming from; that we're not saying that that is the only issue
6 we need to be concerned about, but it is an issue. And it's
7 not always popular to talk about race.

8 Q During the 2013 board election, did you observe any
9 racially coded language being used?

10 A One of the things that you always hear in our district
11 talk about -- during forums we're asked about some of the
12 important things that we want to take on once we're -- if
13 we're selected to the board. And some of the coded language
14 that goes on from I think some of the white candidates is that
15 the biggest challenge in our district is student discipline or
16 the lack of parental involvement, and I think that's typically
17 targeted toward black students and black families. And I
18 think that, to me, that is not. Certainly that is important,
19 but that is not the key issue. Student achievement has to be
20 the focus point.

21 And that's what HAFA did as well. We -- in doing the
22 HAFA, the development of HAFA, one of the things we had to
23 explain to all the teachers and administrators is that there's
24 no excuse for student -- for a student to gain achievement.
25 We are not going to allow economics, the lack of parental

1 involvement, the discipline -- and I used to talk to
2 principals, and they'd tell me that certainly they have a
3 discipline problem in the building, but it's about 10 percent
4 of the students. So 10 percent cannot be the majority of the
5 problem for the other 90 percent to learn.

6 Q You testified earlier about the HAFA program?

7 A Yes.

8 Q Does this program still exist?

9 A I think it was totally eliminated as far as I know.

10 Q When?

11 A After my election I know -- I would assume probably after
12 Dr. McCoy was no longer there.

13 Q Do you know why the HAFA program was eliminated?

14 A No --

15 MS. ORMSBY: Objection, Your Honor. Speculation.

16 THE COURT: He said he didn't know.

17 Q In your view, what does the elimination of HAFA mean?

18 A I think how can you not have -- see the importance of
19 what we were doing not still be an issue? When you look at
20 the -- like I referred to earlier, the situation that the
21 Department of Justice has uncovered in our community, how can
22 we not still be talking about that within our buildings?

23 We also had a thing, Each Child is My Own, and that
24 was displayed in every building throughout the district. How
25 can you eliminate that?

1 Q Have you ever expressed a concern regarding the lack of
2 African-American representation on the board?

3 A Yes, I have.

4 Q Does the African-American community have particularized
5 needs?

6 A Yes, I think you do. Because I think in any culture with
7 regard to educating children, any good teacher will tell you
8 that they had to figure out ways how to find the students, you
9 know, because every student doesn't learn the same. Every
10 student of different cultures learn -- certain things are
11 different for them. So you have to somewhat be certainly
12 intuitive and try to understand what's in the best interest of
13 the student and how do I get to that student.

14 Q Has the school board been responsive to the
15 particularized needs of African-American students?

16 A Which board?

17 Q Whichever board that you would like to speak about.

18 A The board that I served on certainly did. The current
19 board has eliminated HAFA; so I can't speak for them.

20 MS. ORMSBY: Objection, Your Honor. He said he
21 didn't know why HAFA was eliminated.

22 THE COURT: That's all right. Overruled.

23 Q Did you have any role models while you were in elementary
24 or high school?

25 A I certainly did.

1 Q Is it important to have role models?

2 A Excuse me a minute. Yes.

3 Q Why is it important to have role models?

4 A Well, my -- my father was certainly a strong role model.

5 My coaches, people like that. And it's just important. I

6 mean, I'm sorry that I took a while, but it was just my dad is

7 no longer with us. That's why. So it was extremely important

8 to have somebody that I could -- lay a foundation for me.

9 And I know it's important because I had to take on

10 that role as an adult for my children and for all the children

11 in the district. I mean, I used to go through the building

12 and look at those children, those beautiful children, and how

13 they looked up to me as a school board member.

14 And one particular incident. In 2008, if you recall,

15 Obama, Barack Obama, was elected as the President, the first

16 black President of our country. And every year the elementary

17 teachers have asked for volunteers and board members to come

18 in and read to the students. And one day I was asked to come

19 and read to a second grade class, and there was actually two

20 classes they brought together. It was Dr. Sues Month, I

21 think.

22 And so I was sitting there reading a number of books

23 to the kids, and the teacher had introduced me as Chuck

24 Henson, the president of the school board. I was the

25 president at that time. And I read to the children. We

1 answered questions and dialogued with them and had a good
2 time. And when I finished up and the teacher had asked the
3 children to say, you know, "Thank you, Mr. Henson for coming
4 in," one of the kids said, "So you're the president?"

5 I said, "Yes."

6 He said, "Can I have your autograph?"

7 And I'm going to tell you something -- and then
8 another kid. And 30 kids lined up to get my autograph. And
9 I'm going to tell you something. Those 30 kids are probably
10 going to never forget that situation. I know I won't. And
11 that was very humbling.

12 And I think being who I was, and certainly the
13 relative nature for them was the President of the country; so
14 to see me as the president of the school board, you know, they
15 were making some certainly correlation between that. And I
16 think that was -- that was a touching moment. And that's one
17 of those things that I think that an African American does for
18 other African-American students.

19 Q Do you know who Dr. Art McCoy is?

20 A Certainly.

21 Q And who is he?

22 A He was the former superintendent, former assistant
23 superintendent and then superintendent -- first black
24 superintendent of the district.

25 Q Were you on the school board at any point during his

1 tenure as superintendent?

2 A Yes. I was actually a part of the board that hired Dr.
3 McCoy.

4 Q And how would you characterize his tenure as a
5 superintendent?

6 A The two years that I was there, the gentleman was -- he
7 took the school district over or attempted to take the school
8 district to a new level, to raise the bar. He was really
9 doing quite well, but the --

10 Q On what basis do you think that?

11 A Because of some of the things -- the things that he
12 instituted, the cabinet that he started to build, the level of
13 education inside that cabinet. They were -- in my mind, they
14 were equal to that of a junior college or college district.
15 Folks -- their education, the things that he did.

16 He introduced us to social media. He started not
17 only from websites, but we got Twitter accounts and things
18 like that. And just the other thing was, he was also an
19 inspiration to me and almost at half my age, you know. So
20 when I saw him one day, the district had decided to join two
21 schools together, a middle school and a high school together,
22 because that was part of this program because they were
23 failing schools, and they thought that we'd do a unified
24 situation. And the parents came out in just an uproar, and
25 they were really upset. Dr. McCoy was leading this effort.

1 He was an assistant superintendent. And there was such anger
2 in that room of this auditorium, but Dr. McCoy kept his cool.
3 I mean, I was standing on the sidelines wanting to grab some
4 of these people because they were very upset and very
5 frustrated about him.

6 And he stayed and answered every question, embraced
7 everybody. Even the folks that were the most vile, he still
8 supported them, put his arm around one lady. Two years later
9 when he ran for and he was in the process of being considered
10 for superintendent, that lady was his strongest proponent,
11 supporter. Strongest supporter. And that was just
12 inspirational to see that. The gentleman is state of the art.
13 He's a class.

14 Q Are you aware that the board suspended Dr. McCoy in
15 November 2013?

16 A Yes.

17 Q What was your reaction?

18 A I was totally upset. I was just so frustrated, I
19 couldn't believe it. But I was not surprised.

20 Q And why were you not surprised?

21 A Because the two years that I served on that board I had
22 never seen any -- the blatant disdain for his authority, the
23 undermining of his administration from other board members,
24 the lack of trust for Dr. McCoy was just so evident that it
25 was just blatantly ridiculous.

1 Q On what basis do you say that there was a lack of trust
2 and disdain?

3 A There was the conversation. It was said during our
4 meetings, "We don't trust him." And the gentleman would try
5 and institute things, and they would say "no" just because.
6 There was just no respect. And we talked about trust and
7 things like that. It wasn't there.

8 Q Was there a board meeting held after the board announced
9 the suspension of Dr. McCoy?

10 A Yes, there was. There was probably, I don't know for a
11 fact, but probably one of the largest board meetings that it's
12 ever happened; that they had to hold it in the gym at McCluer
13 North, and there was well over a thousand people in that
14 gymnasium.

15 Q Did you attend this board meeting?

16 A Yes.

17 Q What happened during the board meeting?

18 A There was so much anger and passion in the audience.
19 Everybody just came out in total disarray and disappointment
20 and spoke -- a line of people spoke at the podium about their
21 frustration about what was going on with the undermining and
22 the suspension for Dr. McCoy.

23 Q Did you express any concerns at the board meeting?

24 A Yes, I did. I certainly spoke from the podium and talked
25 about the realities of just things that I just mentioned; that

1 the trust factor and just some of the disdain that was going
2 on from the administration.

3 Q How did the board respond to the concerns expressed at
4 this meeting?

5 A So for -- it looks like they chose to just not take it
6 seriously because they continued to proceed with eventually
7 forcing Mr. McCoy out of the district.

8 Q Was there ever a concern that the board suspension was
9 racially motivated?

10 A There was -- certainly there was some concern.

11 Q Did the board respond to these concerns?

12 A No.

13 Q Did they say anything one way or the other about whether
14 their decision was based on race?

15 A They certainly did not say it was based on race; that it
16 was based on things that they couldn't speak about. However,
17 it was just interesting that one particular board member was
18 in opposition.

19 Q What do you mean by there was one particular board member
20 that was in opposition?

21 A Well, there was one board member who was not for the
22 dismissal. There's one board member who was -- basically, it
23 was a 6-to-1 vote. So there was something there.

24 Q And what do you mean by "dismissal"?

25 A No. I said there was something there that --

1 Q You said that there was a 6-to-1 vote in favor of his
2 dismissal?

3 A Yes.

4 Q What do you mean by "dismissal"?

5 A I think -- the suspension.

6 Q How did the students in the district respond to the
7 suspension of Dr. McCoy?

8 A The students were outraged. The students tried to --
9 some students formed sit-ins and things like that. They were
10 very much outraged about the process, because this is somebody
11 who they had come to love. I mean, really, I had never seen
12 an administrator loved by so many students in that district.

13 And then what we're saying is the gentleman that we
14 supported and we hired as a role model is being removed for
15 some unknown reason.

16 Q Are you aware of any other times that members of the
17 African-American community expressed concerns to the board
18 about the decision to suspend Dr. McCoy?

19 A There was other board meetings that followed, certainly,
20 and people -- there was press conferences and things that went
21 on over the next three or four months.

22 Q And you said that the board stated that there were things
23 that they couldn't speak about that motivated the decision to
24 suspend Dr. McCoy. Can you explain what you mean by that?

25 A I don't know. They said that they couldn't talk because

1 it was a personnel issue or something.

2 Q As a former board member and someone who has worked for
3 many years in business and human resources, do you believe
4 that it would have been inappropriate to discuss this
5 personnel issue with the public?

6 A You know, it would -- certainly there are laws in the
7 corporate sector about HR, the security of the privacy laws
8 and things like that, but I think with Dr. McCoy's situation
9 to where it was certainly a public situation where it affected
10 so many people in such a broad audience, when I'm talking
11 about the community and a 12,000-student body, I think we
12 needed some kind of resolution that was credible for us to
13 accept. So I think there's -- sometimes there's some
14 exceptions should have been made in the process.

15 Q Has the board ever responded to requests to know why Dr.
16 McCoy had been suspended?

17 A No.

18 Q Do you believe the board has adequately responded to the
19 African-American community's concerns and the need for
20 information with respect to the board's decision to suspend
21 Dr. McCoy?

22 A I don't think so.

23 Q Are all parts of the district, including predominantly
24 African-American neighborhoods, adequately represented on the
25 board?

1 A I think we only have two African-American members of
2 seven on the board; so I don't think that there's an adequate
3 representation, in my mind.

4 Q And do you believe that only African-American
5 representative can represent the interests of all parts of the
6 district, including African American neighborhood?

7 A No. I don't think so. I'm not saying that. I'm not
8 saying that whites can't represent part of the black district,
9 but I think we certainly have to be -- when you do things like
10 random sampling, I think we have to have some role models as I
11 talked about earlier. I think there's certain things --
12 there's certain aspects of the culture.

13 You know, culture competency training is serious, and
14 certainly understanding that is one thing, but living it is
15 another thing. So I think that any organization, if they're
16 going to represent a body of people or body or community,
17 should be representative of that community. I think it would
18 be the same if it was an all-Asian community and an all-white
19 board. I would say predominantly something needs to change.

20 Q Do you favor single-member districts for the school
21 board?

22 A I think that our current situation does not serve the
23 community at its best. So I think it's worthy of a
24 consideration certainly.

25 Q And why is that?

1 A Because I think the representatives, as I talked about, I
2 think being represented in a district -- you know, when you
3 look at -- when you work hard for a campaign or if a
4 community, I think, had the opportunity to send its own
5 representative from their district, I mean that's a neighbor.
6 That's somebody -- I think we talked about the importance --
7 we would always talk about the importance of communication to
8 the public, and certainly I think that would certainly
9 increase that opportunity for the public to have its voice
10 heard by a neighbor, someone -- so if you broke it into seven
11 districts, I think that would give us an opportunity that's
12 worthy of reviewing.

13 MS. LAKIN: Thank you, Mr. Henson. I have no further
14 questions at this time.

15 THE COURT: Are you ready?

16 MS. LAKIN: Yes.

17 THE COURT: You may proceed.

18 **CROSS-EXAMINATION**

19 **BY MS. ORMSBY:**

20 Q Thank you, Your Honor. Hi, Mr. Henson. We met this
21 morning, correct?

22 A Yes, ma'am.

23 Q I've heard your name for many years. It's nice to
24 finally meet you.

25 A Sure. Same here.

1 Q My name is Cindy Ormsby. I want to first start with the
2 history regarding your mother. And she lived in Kinloch; is
3 that right?

4 A Yes.

5 Q Okay. And she graduated from high school when?

6 A In 19, probably, 41, or somewhere around there.

7 Q And what was the nearest high school to her?

8 A Ferguson High School.

9 Q And at that point in time, Kinloch was not a part of the
10 Ferguson-Florissant School District; is that right?

11 A Kinloch wasn't, but where she lived it was. She lived in
12 an unincorporated -- one side of the street of Kinloch, in
13 Kinloch. So you grew up in a -- it was -- I mean, that's a
14 strange situation because as it exists today. The east-north
15 side of Mabel Avenue or the east side of Mabel Avenue is in
16 the Ferguson-Florissant School District, where she lived.
17 However, across the street is Kinloch; so . . .

18 Q So we both graduated the same year, I noticed, when I was
19 looking at your declaration. You graduated from McCluer,
20 graduated from McCluer North in 1977. And I just wanted to
21 note that I know you didn't write this declaration because you
22 wouldn't have spelled "McCluer" wrong.

23 A Well, I didn't type it up.

24 Q I know. I know. I just found it amusing because we know
25 how -- people misspell it all the time.

1 A Sure. Sure.

2 Q Why do you think that the school board at the time that
3 you were appointed, appointed you?

4 A I think because I was someone who was noted in the
5 community. I had been involved with a number of things. I
6 had served on several independent committees for the board. I
7 was the Citizen of the Year in Ferguson in 2006.

8 Q Could it have been that that board felt it was important
9 to have more African-American representation on the board?

10 A That could be. I don't know. But I think it was more to
11 it than just that.

12 Q And what was --

13 A Because there's a number of African Americans they could
14 have chosen.

15 Q And what was the racial make-up of the board when you
16 were appointed in 2007?

17 A There was Ms. Doris Graham was the only minority on the
18 district -- on the board at the time.

19 Q And then in 2007 you were going to run for a three-year
20 term; is that right?

21 A That's correct.

22 Q And so a majority-white board appointed you in 2007, and
23 when you then signed up to run for school board as a candidate
24 in 2007, there was no uproar from the white constituents of
25 the school district against you at that time; is that right?

1 A No.

2 Q And no one filed against you?

3 A No one ran against me.

4 Q Do you think -- and then in 2010 the same thing, right?

5 You served for three years?

6 A Right. Right.

7 Q In 2010 you signed up to be a candidate for board again?

8 A Uh-huh.

9 Q No one filed against you; is that right?

10 A That's correct.

11 Q Still no uproar from the white community about your
12 service on the school board; is that right?

13 A There was no uproar.

14 Q Isn't it usually the case when an incumbent is unopposed
15 that it is an indication that the constituents are content
16 with the governance?

17 MS. LAKIN: Objection, Your Honor. Calls for
18 speculation.

19 THE COURT: Overruled.

20 A Ask your question again. I'm sorry.

21 Q Isn't it usually an indication when the incumbents are --
22 or run unopposed that it's an indication that the constituents
23 are content with the governance of the school district?

24 A I would suppose, but it also could be that there's no
25 qualified candidate to challenge that person.

1 Q No qualified candidate in the entire school district?

2 Okay. So that brings us to 2013. You had competition in that
3 election, you testified to; is that right?

4 A That's correct.

5 Q And the FFNEA did not endorse you?

6 A That's correct.

7 Q Was there anything that the FFNEA was upset about during
8 that time?

9 A In 2013? I'm not sure. You would have to ask them.

10 Q Were you board president at the time that Jeff Spiegel
11 and his wife were provided lifetime insurance?

12 A Yes.

13 Q FFNEA didn't like that, did they?

14 A I'm not sure.

15 Q Did they endorse any of the 2011 candidates after that
16 happened?

17 A I don't know. No. I don't know. I wouldn't argue if
18 you'd say they didn't.

19 Q Okay. You know who Les Lentz is?

20 A Yes.

21 Q And in 2005 Mr. Lentz came on the board because there
22 was the same number of candidates as there were open spaces;
23 is that right?

24 A Okay.

25 Q There was no election.

1 A Okay. I don't recall.

2 Q And then in 2008 were you on the board with him at that
3 point in time?

4 A I was on the board in 2008.

5 Q And he again ran unopposed in 2008; isn't that right?

6 A If you say so, Ms. Ormsby. I don't know.

7 Q And then he ran in 2011?

8 A Okay.

9 Q And he was not endorsed by the FFNEA.

10 A That's true.

11 Q And he was defeated?

12 A Okay.

13 Q So two elections unopposed; one election he's defeated.
14 Same as you, right?

15 A No. But I was reelected in 2010.

16 Q Because no one ran against you?

17 A Right.

18 Q And he was reelected in 2008 because no one ran against
19 him.

20 A Okay.

21 Q So two unopposed elections. The third election defeated.
22 Right?

23 A For?

24 Q For school board.

25 A For me?

1 Q You had two uncontested elections, and then you were
2 defeated; is that right?

3 A Yes.

4 Q Mr. Lentz had two unopposed elections and then was
5 defeated in his third, right?

6 A If you say so, sure.

7 Q What race is Mr. Lentz?

8 A He's white.

9 Q But you believe when it happened to you it's because you
10 were African American?

11 A In 2013?

12 Q Uh-huh.

13 A I think the issues of me being a racist was spread in the
14 community for some reason, and I think that added to a
15 detriment to my being reelected.

16 Q Do you recall what the racial make-up of the FFNEA
17 committee that was deciding who to endorse was?

18 A I don't remember, but it was not majority -- it was
19 majority white.

20 Q Was it diverse?

21 A It was diverse, yeah.

22 Q All right. And you stated in your testimony that you
23 have no idea what the FFNEA criteria is for choosing who to
24 endorse. Is that what you said?

25 A That's correct.

1 Q Didn't the FFNEA supply you with the questions that you
2 were going to be asked at the interview prior?

3 A Yes.

4 Q They gave you a list of all of the questions, right?

5 A Yes.

6 Q And would it make sense that those were questions that
7 had to do with and concerned what FFNEA was concerned about?

8 A I would think so.

9 Q Do you believe that the answers to those questions has
10 something to do with what -- who FFNEA endorses?

11 A It could possibly, certainly. Certainly.

12 Q Does the FFNEA choose who they're going to endorse prior
13 to candidates filing?

14 A I don't know. I don't know that answer. I've never been
15 a part of the FFNEA.

16 Q Does the FFNEA exclude any candidate from seeking their
17 endorsement?

18 A Are you asking that is there someone they don't invite?

19 Q Yes.

20 A I'm not sure. I have nothing to do -- I don't know how
21 they operate, actually.

22 Q Did you apply for endorsement from North County Labor?

23 A I think we did.

24 Q And did you receive that endorsement?

25 A I don't believe so.

1 Q Do you know how many votes you lost by in 2013?

2 A No. I don't recall.

3 Q Would it surprise you that it was 125 votes?

4 A No, that wouldn't surprise me.

5 Q Is the board involved in the discipline of students on a
6 day-to-day basis?

7 A The board? No.

8 Q And if a student is suspended at an elementary school for
9 ten days, does the board get notice of that?

10 A No.

11 Q Do they approve the suspension?

12 A No.

13 Q Did Dr. McCoy ever ask the board to adopt specific
14 policies with regard to a bias in disciplining students, in
15 your memory?

16 A What are you asking? Restate that. I don't understand.

17 Q Did Dr. McCoy ever ask the board to adopt any policies
18 with regard to bias in disciplining students while you served
19 on the board?

20 A I don't recall that language being used.

21 Q And you'll agree with me, don't you, that the achievement
22 gap is a problem in most every school district in the state of
23 Missouri and probably in the nation?

24 A Certainly.

25 Q Would you agree that there's factors besides the race of

1 a student that could add to the disparity in student
2 achievement?

3 A Certainly.

4 Q Are you an educator by training?

5 A Am I an educator? Not for public education, no. My
6 mother was. My mother was a teacher.

7 Q Are most school board members -- do they -- do most
8 school boards -- I know some do, but is it a requirement to
9 have a degree in education in order to serve on the school
10 board?

11 A It's not a requirement, but I think it would be helpful.

12 Q Are you qualified to propose solutions on how to close
13 the achievement gap?

14 A Yes.

15 Q You are qualified?

16 A I think so.

17 Q Did you propose -- make proposals while you were on the
18 board that were adopted?

19 A Certainly.

20 Q In what form?

21 A One of the things -- certainly we had changes in policy
22 for homework. We looked at curriculum. Certainly, I had some
23 ideas about it.

24 Q Did Dr. McCoy present proposals to close the achievement
25 gap between 2007 and 2013?

1 A For certain.

2 Q And did the board approve those?

3 A Yes.

4 Q Do you know whether the achievement gap got better or
5 worse while Dr. McCoy was there?

6 A It got better, or it closed more.

7 Q Did -- under Dr. McCoy's leadership, did the
8 accreditation points of the school district under the Missouri
9 School Improvement Plan go up or down?

10 A There was -- between the time that I was there, there was
11 no change, but we didn't go down like it is going now.

12 Q You don't know -- you don't know that whether the points
13 went down, your total points went down while you were on the
14 school board?

15 A It didn't go down. No.

16 Q What was the racial make-up of the board when Dr. McCoy
17 was hired?

18 A There was two. Doris Graham and I were the only
19 minorities on the board.

20 Q What was the racial make-up of the board -- are you aware
21 that the school board recently hired a new superintendent?

22 A Yes.

23 Q And have you met him?

24 A Yes.

25 Q What was the racial make-up of the board that hired Dr.

1 Davis?

2 A The racial make-up, I think -- I don't know. I know Ms.
3 Thurman was there. I don't think -- I think there was one at
4 the time.

5 Q Is Dr. Davis African American?

6 A Yes.

7 Q Do you believe he's qualified to lead the school
8 district?

9 A The gentleman that I've met -- he seems to be qualified.
10 I mean, he just got here; so . . .

11 Q I believe you state in your declaration that
12 Ferguson-Florissant is the only majority-minority school
13 district in Missouri that was fully accredited?

14 A While I was there, yes.

15 Q What about Hazelwood?

16 A But that's not a majority-minority district.

17 Q Are you sure about that?

18 A They weren't at the time.

19 Q You also mention in your declaration that the board had
20 issues with regard to Dr. McCoy's residency. Do you remember
21 that?

22 A Yes.

23 Q Did Dr. McCoy's contract require him to live in the
24 school district?

25 A Yes.

1 Q And that was a contract that was negotiated when you were
2 on the board; isn't that right?

3 A That was already in place.

4 Q You didn't change it?

5 A I don't recall changing it, no.

6 Q Do you know if Dr. McCoy's family lived in the house that
7 he purchased within the school district?

8 A I don't know that question. I mean --

9 Q Do you know?

10 A We weren't concerned about his family. It was Dr. McCoy
11 who we were concerned --

12 Q Do you know whether Dr. McCoy's child attended
13 Ferguson-Florissant School District schools?

14 A Did not.

15 Q She did not?

16 A She did not. And I understand why.

17 Q Where did she attend?

18 A I'm not sure.

19 Q And didn't Dr. McCoy, to be generous, spend most nights
20 with his family in his home outside the school district?

21 A I can't say that. No, I wouldn't think so.

22 Q And you don't believe that that's an issue that the
23 school board should be concerned with?

24 A I don't -- what - I don't think -- I think he's spent the
25 nights in Florissant, where he lives.

1 Q Away from his family?

2 A I don't know where his family was, ma'am.

3 Q Did you ever ask -- do you consider yourself a personal
4 friend of Dr. McCoy?

5 A I think now.

6 Q And did you ever ask him why he was suspended?

7 A I never asked that question, because I knew.

8 Q You know?

9 A I knew.

10 Q You know?

11 A I knew.

12 Q How do you know?

13 A Because I sat there for two years, and I saw the blatant
14 disrespect for that gentleman.

15 Q Did you see the reasons he was given for his suspension?

16 A No, I didn't.

17 Q Did you see the notice of charges that he was given?

18 A No.

19 Q So you don't know, do you?

20 A I think I do.

21 Q You think you know.

22 A Yes.

23 Q Did you ask him why he resigned rather than going forward
24 with the termination hearing where all of those charges would
25 have been made public?

1 A Did I ask him?

2 Q Yeah.

3 A No, I didn't ask him.

4 Q And you believe the board should have discussed those
5 reasons with the public?

6 A I think the public should have been given some more
7 information than it was provided.

8 Q And you believe they should have done that against Dr.
9 McCoy's wishes?

10 A I think Dr. McCoy should -- could have the decision,
11 certainly.

12 Q Do you know whether he did or not?

13 A I don't know.

14 Q Do you know whether he was asked to sign a release and he
15 refused?

16 A I don't know.

17 Q What would you have done differently if you were on the
18 board?

19 A I would have fought like hell to keep that man on the
20 board as a superintendent.

21 Q What would you have said to the public at that meeting?

22 A What I said to the public during the big board meeting,
23 that the disrespect and the undermining of that man's
24 administration is what was at hand.

25 Q Does it make sense that, if the school board terminated

1 Dr. McCoy because they're a bunch of racists, that they would
2 have hired another African-American superintendent?

3 A Did you see what was going on in our community? Yes, I
4 understand the pressure's probably on them to do that at that
5 time.

6 Q So you think that's why they hired Dr. Davis?

7 A I think that's part of the reason.

8 Q Do you know that to be the truth?

9 A I don't think it -- not to discredit Dr. Davis because I
10 think he's a fine gentleman, but I think the pressure was on
11 to make a decision.

12 Q But you don't know, do you?

13 A Neither of us do.

14 Q Were you there during the conversation -- were you there
15 at the meetings when they discussed who to hire?

16 A Yes.

17 Q You were at the closed meetings when --

18 A No. I thought you were --

19 THE COURT: Slow down. Everybody slow down.

20 A I thought you meant --

21 THE COURT: Stop. We have to stop first. And then
22 we'll reboot and we'll try again.

23 Q My question is were you there at the closed session
24 meetings when they discussed who to hire and chose Dr. Davis?

25 A No.

1 MS. ORMSBY: I don't have anything further.

2 THE COURT: Thank you, ma'am.

3 MS. ORMSBY: Oh, I'm sorry. I need to check with my
4 counsel.

5 THE COURT: Okay. One second.

6 Q (BY MS. ORMSBY) I actually do have a couple more
7 questions.

8 You said that, when you ran for election in 2013,
9 that one school board member did support you, correct?

10 A Yes.

11 Q And that was Mr. Paul Schroeder?

12 A Yes.

13 Q What race is he?

14 A White.

15 Q I believe you testified in your direct, correct me if I'm
16 wrong, that when you sat on the board with another African
17 American, that they were able to appropriately address the
18 concerns of the African-American community. Is that what you
19 said?

20 A I said we got to that point, yes.

21 Q And how many African Americans are sitting on the current
22 board?

23 A Two.

24 Q Did you vote in 2010, when you were president of the
25 board, to give Mr. Spiegel and his wife lifetime health

1 insurance?

2 A Yes.

3 Q Was that a popular decision?

4 A Yes.

5 Q Among the public?

6 A Oh, I thought you were talking among the board.

7 Q No. Was the board's decision a very popular decision?

8 A No.

9 Q That was quite a public uproar, wasn't there?

10 A Yes, because the public didn't understand why we did it.

11 Q Did Mr. Lentz vote for lifetime health insurance? Did
12 Les Lentz vote for lifetime?

13 A I don't recall, but it was -- go ahead. Sorry.

14 Q No. Finish.

15 A No. I don't recall. But I know that the majority of the
16 board did.

17 Q Do you remember what the vote was?

18 A I don't remember what the vote was.

19 Q Have you ever released personnel information about
20 another school board member?

21 A I didn't have that authority. I mean, I didn't have that
22 opportunity to do; so, no.

23 Q And you stated that you would have fought like hell to
24 keep McCoy as the superintendent of the school district,
25 right?

1 A Yes, because it was in the best interest of the district.

2 Q Would you have fought like hell for any reason at all?

3 Could Dr. McCoy have done anything wrong?

4 A Paul Schroeder supported him, and I give that man the
5 highest integrity. So there's nothing that man could have
6 done -- I think because of Paul Schroeder would not have
7 supported him.

8 Q If Paul Schroeder -- first of all, you don't know --
9 well, never mind. If Paul Schroeder would have voted to
10 suspend Dr. McCoy, then you would have been okay with it?

11 A I don't know. I would have still questioned it, because
12 I know Art McCoy like they don't know.

13 MS. ORMSBY: Thank you. Nothing further.

14 THE WITNESS: Sure.

15 THE COURT: Any redirect?

16 MS. LAKIN: Yes, Your Honor.

17 **REDIRECT EXAMINATION**

18 **BY MS. LAKIN:**

19 Q Mr. Henson, in November 2013, when Dr. McCoy was
20 suspended, what was the racial make-up of the board at that
21 time?

22 A It was an all-white board.

23 Q You testified just now that earlier, during your direct,
24 that one of your opponents in 2013 was Leslie Hogshead; is
25 that correct?

1 A That's correct.

2 MS. ORMSBY: Objection. I don't think that was
3 addressed at all.

4 THE COURT: It wasn't discussed on cross. So try to
5 stay focused on what she covered on cross; although that
6 election was certainly discussed. You have latitude to
7 explore it.

8 Q During the 2013 election, were there any other candidates
9 on the board who had served during the period of time when the
10 board undertook the vote to -- regarding Dr. Spiegel's health
11 insurance package?

12 A Yes. Leslie Hogshead.

13 Q And --

14 A She supported it.

15 Q Do you know if she was endorsed by the FFNEA?

16 A Yes.

17 Q You testified a moment ago that Mr. Paul Schroeder
18 supported you in 2013.

19 A Yes.

20 Q Is that correct?

21 A Yes.

22 Q How do you know?

23 A Well, he had a -- well, he came to some of my
24 fund-raisers, my meet and greets. He had a campaign sign in
25 his yard.

1 Q Was there anything that occurred during his support of
2 you that raised any concerns for you?

3 A Yeah. He told me that --

4 MS. ORMSBY: Objection. Hearsay.

5 A Certainly.

6 THE COURT: Overruled.

7 A Mr. Schroeder shared with me that one of his white
8 neighbors saw my sign.

9 THE COURT: Now we're -- the question you asked: Was
10 there anything that occurred during his support of you that
11 raised any concerns?

12 Now, instead of saying something that occurred,
13 you're talking about what somebody said. So you need to work
14 on this because we're not going to do hearsay, what other
15 people said. You asked for an occurrence. So we got to stay
16 focused. Do you follow me? That's why I overruled the
17 hearsay objection.

18 But if we're going to talk about what other people
19 said if they're not a party opponent or you give me a hearsay
20 exception, I have a limitation. So that may seem arcane, but
21 I know your attorney and the attorney understands what I just
22 said.

23 THE WITNESS: Okay.

24 MS. LAKIN: Nothing further, then, Your Honor.

25 THE COURT: Thank you.

1 Thank you, sir. You may step down.

2 We will take -- I'm sorry. Was there something else?

3 I don't mean to cut anybody off.

4 MR. HO: No, Your Honor.

5 THE COURT: All right. Fair enough. We'll take our
6 morning recess at this time. We'll reconvene at 10:50.

7 **(COURT RECESSED FROM 10:20 AM UNTIL 11:00 AM.)**

8 THE COURT: All right. If you would call your next
9 witness.

10 MR. ROTHERT: Your Honor, before we call our next
11 witness, we wanted to inquire about for planning purposes for
12 tomorrow. Do you expect us to end at --

13 THE COURT: Around one o'clock. The message is eat a
14 nice breakfast, and we'll work through till one-ish, depending
15 on how the witnesses are going.

16 MR. ROTHERT: Okay.

17 MR. MCDONALD: May it please the Court, we'd like to
18 call Doris Graham.

19 THE COURT: If you would step forward, ma'am, and be
20 sworn.

21 **(WITNESS SWORN BY THE CLERK.)**

22 THE COURT: You may proceed.

23 **DORIS GRAHAM,**

24 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**
25 **FOLLOWS:**

DIRECT EXAMINATION**BY MR. MCDONALD:**

Q Would you please state your name for the record?

A My name is Doris Ann Graham.

Q What is your age, Ms. Graham?

A Seventy.

Q Where were you born?

A Clayton, Missouri.

Q And is that in St. Louis County?

A Yes.

Q And where do you currently reside?

A Berkeley, Missouri.

Q How long have you resided there?

A Forty-three years.

Q And what's the racial composition of the Berkeley township?

A Over 90 percent black.

Q And are you married?

A Yes. January 31 will be 51 years.

Q And do you have any children?

A Yes. One daughter.

Q And what does she do?

A She's an educator, teaches at the Aspire Academy in St. Louis, Missouri.

Q Before I ask about your educational background, are you

1 currently employed?

2 A Part time with Deer Valley Home Health Services. I serve
3 as their compassionate care coordinator. I pray for their
4 clients upon request, as an ordained preacher.

5 Q And what was your prior occupation?

6 A Educator. St. Louis Public Schools for 38 years.

7 Q And tell us exactly where you taught.

8 A I taught at Clark School for ten years. Left there and
9 went to Shepard School as a reading specialist. Left there
10 and went to Patrick Henry as instructional coordinator and
11 then Froebel Elementary School as instructional coordinator.
12 Then I retired from Ames Visual and Performing Arts as the
13 assistant principal.

14 Q And performing arts -- can you explain what that means?

15 A Well, that was one of our special schools in the St.
16 Louis Public Schools where we emphasized the arts at the
17 elementary level. We had the band. We had the orchestra. We
18 had dance classes. We had the speaking and all of the art
19 forms and along with the elementary regular curriculum. And
20 from the elementary school they would go to Carr Lane, which
21 was the middle school, for performing arts. And then the high
22 school, they would go to Central Visual and Performing Arts
23 High School.

24 Q All right. Well, what is your educational background?

25 A Well, I started in a one-room schoolhouse in Clayton. It

1 was on the corner of Hanley and Bonhomme. I went from
2 kindergarten to third grade there, and then --

3 Q Before you tell me about that one-room schoolhouse, what
4 year was that? What year?

5 A I was born in 1945; so that had to be 1950.

6 Q What was that school like?

7 A It was segregated. It was known in Clayton as the school
8 for the colored children. And we also had children who were
9 bused to our school from Robertson, Missouri, and from
10 Kinloch.

11 Q Then after you got out of the one-room schoolhouse, where
12 did you go?

13 A To the city of St. Louis. My mother married, and I went
14 to Benton School for about a year. And then with the *Brown v.*
15 *Board of Education* where they desegregated the schools,
16 supposedly, I didn't have to bypass Gundlach School anymore,
17 which was only a block away from my home. I started going to
18 Gundlach School, and then from there, for a short time, when
19 my house burned down, I lived downtown at 2713 Gamble and went
20 to Duvall School, and then we moved back out west on Burd and
21 Wells, and I went to Emerson School from fifth to eighth
22 grade, where I graduated, went to Soldan High School,
23 graduated, and from there went to Harris Teachers College. I
24 got a scholarship and graduated from there and started
25 teaching right across the street at Clark School from Soldan

1 High.

2 And then after that, I went to UMSL, got my master's
3 from there. Went to St. Louis U., got my Ph.D in 1979. And
4 then I went to Aquinas Institute of Theology and got a second
5 master's in pastoral studies and preaching.

6 Q What did you get your doctorate degree in?

7 A I got my doctorate degree in educational administration,
8 superintendency.

9 Q And were the schools racially segregated prior to *Brown*
10 *v. Board of Education* decision?

11 A Yes. Yes, sir.

12 Q How long after the *Brown* decision were the schools
13 desegregated?

14 A How long after that? A long time. Well, the attempt was
15 made in the city, and when I became a reading specialist, I
16 was sent to Shepard School, which was deep south St. Louis.
17 They had tried to get black children to come to the schools in
18 the south, but the parents in south St. Louis just were not
19 going to have that. So instead they sent the teachers.

20 Q Now, you went to high school where?

21 A Soldan High School in St. Louis city.

22 Q Was that an integrated high school?

23 A Yes. When I first went there in 1959, it was integrated.
24 We had quite a number of white students, but within about two
25 years of white flight, they were gone, and there were just a

1 handful left.

2 Q Well, how did you respond to that?

3 A How did I respond? Well, I looked around and they were
4 gone and -- except for my little white friend named Linda
5 Whiff, who graduated from eighth grade with me from Emerson
6 School, and she stayed because she lived in the neighborhood
7 and did not flee to a private or parochial school.

8 And she and a few others stayed. Kenvi Sheenan
9 stayed, and she lived right up the street from Soldan High
10 School. When she graduated, she came back and became a math
11 teacher there until she retired.

12 Q As a student in the school, did that flight, white
13 flight, have any or no impact upon you whatsoever?

14 A Yes, it did.

15 Q Explain what impact it had.

16 A The impact it had on me was that it made me work harder
17 in the club that we had called the Human Relations Club, and I
18 knew that there were good people of all races, and it made me
19 work harder as a kid and a teen-ager, 15, 16, 17 years old.
20 That's the impact it had on me.

21 And then I decided at that time that whatever I could
22 do as a young person, as an adult, as a community leader, that
23 I was going to try and make a difference to pull and bring
24 people together.

25 Q Well, when you were growing up in Missouri in St. Louis

1 County, did you experience any segregation other than in the
2 public schools?

3 A Other than in the public schools, I can remember we all
4 got together to go up to White Castle on Natural Bridge and
5 Kingshighway. We were preteens, teen-agers. We could walk
6 there from our neighborhood. And we were denied service.

7 And I can remember when I was a freshman at Harris
8 Teachers College at that time -- now it's called Harris-Stowe
9 State University -- that our teacher, Dr. Nicholson, he told
10 us if we went to hear this guy speak at this seminar about the
11 Holocaust, we would get extra credit in our class.

12 So I went with my friend, Ronald Moore. He was
13 white. And he said, Doris, I'll pick you up, and I'll pick
14 Freddie Pryor up, who's black, and we'll all go to Lemay to
15 the restaurant where my wife works, and when she gets off from
16 work, then we'll all go together, all four of us.

17 So we went into the restaurant. He dropped us off.
18 And we went to the back to sit down because we had already
19 eaten and we didn't need to order any food. And then the chef
20 or the manager -- somebody -- came back in the back room where
21 we were, with the white apron, white outfit on. He said,
22 "Would you like to have something to eat?"

23 And we said, "No, thank you."

24 He said, "Well, then you'll have to leave because you
25 can buy something and take it out, but you certainly can't eat

1 it in here."

2 And I said, "Well, okay. Come on, Freddie. Let's
3 go."

4 So we started walking out. And Mr. Moore's wife, you
5 know, she looked really embarrassed. But what she did, she
6 called her husband to come and pick us up. We stood outside
7 until he picked us up and took us to his home. And then we
8 went on to hear the speaker. And every time he said the word
9 "Jew," I thought about "black," how I had been discriminated,
10 and I said, "This is not right."

11 Q So how did you deal with that experience?

12 A It became a part of my fabric, part of me. I just was
13 made aware of it every time to make sure that just speak up
14 and that wouldn't happen to other people or to tell them how
15 to deal with it.

16 Q Yeah. Well, have you run for public office?

17 A Yes.

18 Q Tell me when and whether you were elected or not.

19 A 1988 I ran for school board. I was teaching, as I said
20 earlier, at Shepard School, teaching reading. I got a phone
21 call. It was from Ted Hoskins, who was then the mayor of
22 Berkeley. And he said, "Our committee met last night, and
23 there's going to be an opening on the Board of Education for
24 Ferguson-Florissant, and we all decided that we need to call
25 you and ask you if you would write a letter saying that you

1 would like to fill that position."

2 And I remember it so well. I told him, I said, "I
3 don't know anything about being a board member."

4 He said, "That's okay. They don't know either, but
5 you can get on there and learn."

6 So I did. And from grass roots I had family members
7 and friends and church members who just helped me because I
8 hadn't ever campaigned for a public office before, but I know
9 what it is to campaign from high school and college. And I
10 won.

11 Q Well, what was the race of the mayor who --

12 A Black. Black, Uh-huh.

13 Q And how did you -- it was an appointment that you were
14 applying for?

15 A Well, I wrote a letter, you know, as it was advertised:
16 If you're interested, to write a letter saying that you would
17 like to be on the board. And I wrote the letter, and the
18 board rejected my letter. And I don't know if it's because I
19 said I specifically wanted to be on the board to be an
20 advocate for African Americans but also an advocate for all
21 children, and what happened was I was running at the same time
22 for president of Local 420 Teachers Union, and when Jim Clark
23 came to my home and said that the board wants some kind of
24 information about you, I just handed him a brochure that
25 talked about me and what I do.

1 And then two days later I got a phone call saying
2 that the board was not going to interview me. And then a day
3 later, after that, one of the members of FFNEA called me and
4 he said, "We heard that the board turned you down, but what
5 we're saying is we'd rather have somebody who knows about
6 unionism through AFT even though we are FFNEA, and we told
7 them they need to interview you." So they did interview me.
8 And I was not chosen by them, but I told them that if I was
9 not chosen, I had just decided that I would run and with the
10 intentions of winning.

11 Q Who was chosen to fill the position?

12 A There was a black lady, a little short black lady. I
13 think she stayed on for about a month. I don't know her name.

14 Q And did she stay on the board?

15 A For about a month.

16 Q And then resigned?

17 A Quit, yes.

18 Q And did they have an election for the board then or
19 another appointment?

20 A I don't know what they did. I know I had readied myself
21 to start my campaign. I had to start campaigning about a week
22 after the interview.

23 Q And then you ran for office?

24 A Yes, sir.

25 Q And that would have been in 1988?

1 A 1988, yes.

2 Q And did you win or not?

3 A I did win. I did win. And I had the support of so many
4 people in Berkeley that I didn't even know I had supporters,
5 and I'm looking at one right now. And the next time I ran and
6 the next time and next time, she became my -- one of my
7 campaign managers, Judy Shaw.

8 Q Were there any other blacks serving on the school board
9 when you were elected?

10 A No, sir.

11 Q And when was the next black elected, to your knowledge?

12 A Gwendolyn Thomas was elected. I think that was around
13 2000.

14 Q Okay. Now, can you explain your success in the election?
15 Why do you think you won?

16 A Well, I think I won -- one thing, hard work; and number
17 two, a lot of people knew me, name recognition from being very
18 visible in the county as well as in the city where I worked --
19 I mean, you know, where I held employment.

20 And then I had people at the different churches in
21 Berkeley who knew me and were committed to getting the word
22 out, telling people to vote for Doris Graham. And later on,
23 three or four years later, one of the board members, Ralph
24 Ranken -- Rankenbrand -- Ankenbrand, thank you -- Ralph
25 Ankenbrand said, "Doris, I hate to tell you this, but a lot of

1 people voted for you because they thought you were Dr. Delores
2 Graham."

3 I said, "But she's the principal at Cross Keys."

4 And he said, "It doesn't matter. They just thought
5 that she was the one on the ballot and they were voting for
6 her, and she's white."

7 I said, "Well, I bet you the next brochure I put out
8 they'll see my face, and they'll know who I am and that I
9 certainly am not white. I'm black."

10 Q Well, you testified that you were on the board from 1988
11 to 2002; is that correct?

12 A Till 2011.

13 Q I'm sorry, 2011.

14 A But there was one time in between now -- I'm 70 years
15 old, because I can't tell you what year it was that I lost,
16 that I lost the election. I don't know it was '94, '90,
17 whatever, but whatever that year was, I lost. And some
18 people, including my sister, said, "I don't think you
19 campaigned hard enough."

20 But I did. But I lost. And so what happened,
21 somebody on the board, their job was -- had moved them to
22 Texas, and so there was an empty seat. And again I wrote a
23 letter saying that I'd like to fill that seat, and that
24 sitting board did vote for me to come back, but I had to
25 promise to run that following April, which I did, and I did

1 win.

2 Q What year was that?

3 A I can't remember.

4 Q Well, you ran in subsequent elections with opposition and
5 won?

6 A Yes. And there were two years that I had no opposition
7 and I had no campaign and, you know, won because of that.

8 Q Can you remember the dates of those elections?

9 A No, I do not.

10 Q Okay. And then you lost again in 2011, I believe you
11 said?

12 A I remember that, yes. I lost that election. There were
13 nine people running, and they only needed three seats.

14 Q Well, do you have any views one way or another whether or
15 not African-American candidates of the school board face any
16 barriers to their election?

17 A Yes, I do.

18 Q Well, explain what you think those barriers are.

19 A I think the barriers are people vote for people that are
20 much like themselves, and if every black that there was in
21 Berkeley would have voted for me, I still would not have won
22 any election. I would need the votes of white, Hispanic,
23 other people.

24 And for a black -- I'm going to speak specifically
25 from Berkeley -- it's hard to get them to run, to spend the

1 money, spend the time and the energy to run, because they're
2 looking overwhelmingly at the district and saying it seems
3 like it's impossible.

4 But I tell them it is possible, but you just have to
5 get the votes out. You just have to campaign in Ferguson in
6 Florissant, Berkeley, Cool Valley, you know. You just have to
7 campaign and get people at every polling place to perpetuate
8 your name and pass out fliers for you.

9 Q Well, do you think that African-American candidates face
10 any barriers in their election campaigns?

11 A Yes, sir.

12 Q And what are those barriers, in your judgment?

13 A In my judgment is, first of all, race, the color of their
14 skin. They're black. And some people will not vote for you
15 because they don't know that much about you, and if you're
16 black and they're white, they're not going to vote for you
17 unless they know of something good that you've done. That's
18 my opinion, though.

19 Q Okay. Well, what about the role of the
20 Ferguson-Florissant National Educational Association? In your
21 judgment, does that play some or no role whatsoever in the
22 electoral process?

23 A Yes, sir. It does play a role. The first year, 1988, I
24 ran, they did not support me. I didn't go to an interview or
25 anything to even ask to be supported, but after that, they did

1 support me. In this last election, 2011, they did not support
2 me. But I think it's important for them to support you
3 because what they will do, they will help you with poll
4 workers. They will help you with signs, putting signs in
5 yards of your constituents, and they will give you -- back in
6 the day they would give you, like, \$200 to have -- to do what
7 you want to do with it. I used it for my signs to be made.

8 And the person they had assigned to help their
9 candidates at that time was Paul Morris, and he would -- he
10 just called and asked me, "What color signs you want?"

11 I said, "Red and white."

12 And right away, he said, "Okay. I can do it."

13 So I went and picked them up when they were ready,
14 and I took half of them and put it -- gave them to my
15 committee to put in yards, and then he kept half and gave it
16 to FFNEA people to put in their yards.

17 Q So how do you go about trying to get the NEA support?

18 A Well, you fill out a questionnaire, and then they will
19 invite you to be interviewed. Then after the interview, you
20 answer the questions. They have already given you a list of
21 questions that might be asked. And they have a committee of
22 people, and they ask the questions, and then you wait to see
23 what their decision is, and they'll tell you either they will
24 support you or they won't.

25 Q Will they give you the reasons for their decision?

1 A No. They normally don't give you the reasons for the
2 decision, but I was told that at that time, in 2011, that they
3 had decided that the incumbents -- three incumbents, Les
4 Lentz, who was president, I believe, at that time, I don't
5 remember, but I think he was, and Jim Clark, who had been on
6 for about 30 years plus, and I had been on for 23 years --
7 they said that's long enough. It's time for some new blood.

8 Q Okay.

9 A Even though I had been a big supporter, you know, of the
10 teachers and, of course, the students because I always think
11 good teachers and students go together like soup and salad.

12 Q Well, what's the racial composition of the FFNEA?

13 A Well, back in the day, it was like about 85 percent
14 white, and now I believe it's more African Americans are part
15 of FFNEA.

16 Q When you ran in 2011, I think you may have said this, but
17 just to clarify, did the NEA actually support any of the
18 candidates in that election?

19 A Yes. They supported some candidates. They made it known
20 who they were supporting.

21 Q Were they white candidates?

22 A Yes, sir. Well, I'm going to take this back. Martinez,
23 Hispanic. There was one young man. His name was Martinez.
24 And Paul Morris, I think Paul.

25 Q Who won the seats that were up?

1 A The three that were supported by the FFNEA.

2 Q All right. Do you know whether or not the FFNEA has
3 endorsed equal numbers of black and white candidates for
4 public office for the school board?

5 A Well, from what I read, no, they have not.

6 Q Okay. And I don't want to be repetitive, but in 2012 the
7 school board elected how many candidates? And what was their
8 race; do you remember?

9 A In 2012, that was after I lost in 2011, but I do remember
10 that -- no, I don't remember. I'm not going to say I do. I
11 don't.

12 Q Well, do you remember who won the seats in the 2012
13 election? Were they white or black candidates?

14 A Could you tell me who their candidates were?

15 Q Well, Barbara Morris, Brian Ebert, and Paul Schroeder.

16 A Paul Schroeder won. Barbara did not.

17 Q Okay. And do you know whether or not FFNEA endorsed both
18 of those winning candidates?

19 A I know they endorsed Paul Schroeder. I don't know about
20 the other two.

21 Q Well, are you familiar with the candidates who ran in
22 2013 for the school board?

23 A Henson. And he was not endorsed by FFNEA. I did work on
24 his campaign.

25 Q And do you remember who won that election?

1 A He didn't.

2 Q Well, could I tell you Hogshead and Brown? Do those
3 names ring a bell?

4 A Yes. I remember Hogshead won, and Mr. Brown, he won, and
5 he was proud to let me know that even though I wasn't on the
6 board, he just loved to see me come to the meetings because I
7 always smile. And he let me know that he had been Cindy's
8 Sunday school teacher when she was a youth. And I said,
9 "Well, you must be a good person, then," because I knew
10 nothing about Mr. Brown at that time.

11 Q Well, as a longtime member of the school board, were you
12 familiar with whether or not Mr. Henson promoted the special
13 needs of black students in the school district?

14 A Yes, sir. He -- most certainly he did.

15 Q And do you think that had any impact one way or another
16 on his defeat in the 2013 election?

17 MS. ORMSBY: I'm going to object as to speculation,
18 Your Honor.

19 THE COURT: Rephrase the question.

20 Q Well, do you think that his promotion of the special
21 needs of African-American students had any impact one way or
22 the other?

23 A Yes, it did.

24 Q Well, please give us your answer.

25 A Well, he was always advocating for African-American

1 students. And sometimes when people -- like I heard when
2 people would see him coming, they would know what his agenda
3 was, and everybody was not in favor of his agenda. I'm going
4 to give you an example. We had gone to a national --

5 THE COURT: Wait a minute. There is no question
6 pending now.

7 THE WITNESS: Okay.

8 THE COURT: Let's ask questions.

9 THE WITNESS: I answered the question. Fine.

10 Q Can you give me an example of what you think is the
11 significance of race in this contest?

12 A Yes, I can give you an example. We had attended a
13 national school board meeting, and we went to some of the
14 caucuses of the boards, and one was that we saw the drumming
15 that was done by this particular caucus. And it was such an
16 engaging thing. And we came back to our own board meeting,
17 and he brought up the idea that we were trying to get our
18 discipline to be better in the district, and maybe if we can
19 have that kind of thing going on during our lunch periods
20 that, you know, have some drumming going on, that it could cut
21 down on the noise and the confusion and the students would
22 enjoy that and would not be a discipline problem. And I
23 agreed, but it didn't go anywhere. I don't think they started
24 drumming in the lunchroom.

25 Q Well, how long have you lived in Berkeley?

1 A Forty-three years.

2 Q And do any other board members live in Berkeley during
3 your time on the board?

4 A No, sir.

5 Q And do you know if anyone has ever been elected to the
6 board from Berkeley?

7 A No, sir.

8 Q Well, do you think that not having anybody on the school
9 board from Berkeley has any impact on the interests of the
10 residents of Berkeley?

11 A Yes, sir.

12 Q Well, explain what your answer is.

13 A When I was on the board as a member of the Berkeley
14 community, people would call me many, many times, different
15 issues, and they would be resolved. And after I wasn't on the
16 board anymore, they felt that like they didn't really have
17 anyone they could just particularly call to and tell what
18 their concerns are. But I would tell them who to call. Let
19 the board president know what your concern is, and he will
20 tell the superintendent. I never tried to micromanage at all.

21 Q Well, do you have any examples of what you believe is the
22 problem with Berkeley not having a representative on the
23 school board?

24 A Yes. Our community of voters in Berkeley is small
25 compared to others, and I believe if everybody in Berkeley

1 voted for you, you still wouldn't win.

2 Q Has Berkeley had any special problems that haven't been
3 addressed, in your judgment, by the school board?

4 A You know what? I can remember when the airport
5 authority, you know, had an agreement, they took our land, and
6 they were supposed to give us our schools, replace our
7 schools. And one was an elementary school which we named
8 Johnson-Wabash, and the other one was we named McCluer
9 South-Berkeley, the high school.

10 And there was such big uproar in the naming of the
11 elementary school. They wanted to name it McCluer -- I mean
12 they wanted to name it January-Wabash, and we had been given
13 information from Dr. Wright about the history of that area,
14 and January was a plantation named after the January family.
15 And I told them that I thought it would be an insult to name a
16 school after plantation owners when the majority of the
17 people, young people who would be going there, would be black.

18 And so after much discussion, we named it
19 Johnson-Wabash, and Johnson after the Reverend Johnson who had
20 been appointed to that school board back in the day by -- I
21 guess by the State of Missouri. But I did read the history
22 that he had to be escorted to the board meetings because of
23 racism.

24 Q Escorted by whom?

25 A By the police. Armed guards, they said.

1 Q Now, you say you objected to the naming of the district
2 after a, quote, "plantation," end quote. What's wrong with a
3 plantation? Just explain your answer.

4 A Okay. What's wrong with a plantation? For a person, a
5 black like me, it's a derogatory memory of how the black folks
6 on the plantation were not treated as first-class citizens.

7 Q Well, were they treated as slaves in Missouri?

8 A Yes.

9 Q Okay. So do you know someone named Dr. Art McCoy?

10 A Yes.

11 Q And tell us who he is as you understand it.

12 A Well, Dr. Art McCoy -- I was on the board when he was
13 hired as assistant superintendent, and I was on the board, I
14 believe, when they were about to hire him as superintendent.
15 And I do know that in 2011 I did not win my election to be a
16 board member again, and I had a conversation with his mother
17 through another organization, and she said, "I sure hope" --

18 MS. ORMSBY: Objection, Your Honor. Hearsay.

19 THE COURT: Just be careful not to --

20 A Okay. Yes, I do know him.

21 THE COURT: All right. Great.

22 Q What is your assessment of him?

23 A Excellent educator, excellent visionary, a person who
24 loves children.

25 Q And do you recall the circumstances of his departure?

1 Did you have any insight or understanding of that?

2 A I only knew what came out in the paper and what people
3 were talking about, because I was not on the board. But I did
4 go to the meetings that were held at the high school to hear
5 what people were saying.

6 Q Okay.

7 A I'm not going to say what they were saying because it
8 would be hearsay.

9 Q Okay. Well, did you hear anything from members of the
10 school board --

11 THE COURT: I'll just leave. You go ahead and rule
12 on the objection.

13 Q Well, did you hear anything from members of the school
14 board? That would not be hearsay, if I'm correct, Your Honor.

15 A Yes, I did. And it was from Paul Morris. I went to him
16 and I just --

17 MS. ORMSBY: Actually, it is hearsay, Your Honor.

18 THE COURT: It is hearsay. He's not a member -- he's
19 not a party opponent.

20 Q I'm sorry, Your Honor. I asked if members of the
21 board --

22 A Of the board?

23 Q No. Current members of the board?

24 A Did I talk to current members who are on the board?

25 Q Yes.

1 THE COURT: Current members of the
2 Ferguson-Florissant School District board.

3 THE WITNESS: Yes. And that's what I'm answering to.

4 THE COURT: All right.

5 THE WITNESS: And --

6 THE COURT: Let's identify who we're talking about.

7 A Okay. Mr. Paul Morris. I talked with him just
8 privately, just one on one, at the meeting. And I asked him,
9 "What is so wrong?"

10 And he said, "You just don't know." He said, "It's
11 Art McCoy's way or the highway."

12 And by that time, it was time for them to reconvene;
13 so . . .

14 Q Well, do you know whether or not the school board ever
15 gave a public reason for suspending and then adopting his
16 dismissal as a superintendent?

17 A They did not publicly say what the reason was.

18 Q Did you ever approach the school board to try to find out
19 the reason or object to his departure?

20 A Well, no, I didn't, because I know that a school board,
21 when you talk about personnel, they're not supposed to talk
22 about it unless the board, unless they decide as a board, what
23 they're going to say.

24 Q Okay.

25 A Publicly.

1 Q Well, do you have a position one way or another about the
2 adoption of single-member districts for the school district?

3 A I am for it. I am in favor of it.

4 Q Tell me why.

5 A The reason is I believe that it will have a better
6 reflection on the community that the board serves.

7 Q And can you explain why you think that is true?

8 A I think that people will feel more comfortable about
9 running for a position believing that their own community will
10 be the ones who will support them and vote for them and get
11 them elected as support to a wider range of communities.

12 Q Well, as someone who has lived in St. Louis County for so
13 many years, do you have any view whether or not there is still
14 evidence of racial segregation in the county?

15 A Yes, sir.

16 Q Tell me what you base your answer on.

17 A I base my answer on what I see, what I see in the city of
18 Ferguson, what I see in the city of Berkeley.

19 Q What do you see?

20 A Well, I see, until this last election, that the city
21 council in Ferguson was basically white, and the city council
22 in Berkeley is all black except for a long time we had one
23 white city council member, Jean Montgomery, and because of age
24 and health, she did not run again for the Area 5, where I
25 live.

1 Q Well, you testified about your involvement in a church in
2 St. Louis County.

3 A Yes.

4 Q Do you have any knowledge of whether or not churches tend
5 to be predominantly of one race or another?

6 A Yes, they do.

7 Q And please explain your answer.

8 A Well, I love going to Ferguson Baptist Church. I've been
9 there for several things, and they do have some blacks, but
10 it's basically white, back in the day. And then I go to
11 Second Baptist Church, where Dr. Miller, when he was living he
12 was the pastor, and that's where my mayor, Ted Hoskins,
13 belonged, and many times I was involved -- invited there to
14 speak, and it's all black.

15 Q Have you ever gone to any churches that were
16 predominantly white?

17 A I thought I just said Ferguson Middle -- I mean Ferguson
18 Baptist Church.

19 Q Okay. I'm sorry. I'm sorry.

20 A Yes.

21 Q I have just a few more questions. Now, during the time
22 that you served on the school board, did you think it was
23 responsive to the particularized needs of the African-American
24 community?

25 A You know, when it was brought up to the board, on the

1 early years of my boardsmanship we had people even, you know,
2 black -- I was black, of course, and but the white members on
3 the board, they were open to all children, black and white.
4 And we did see eye to eye, and we did make a lot of good
5 decisions, and I was happy about that.

6 But over the years, I don't know how it is now, but
7 it just does not appear that that's the same kind of lens that
8 they're looking at. Maybe they have more problems now. But
9 we were very concerned about having excellent opportunities
10 for all children.

11 We were just so excited to be able to brag about we
12 have six Bill Gates Scholars, and now I understand we have
13 eight Bill Gates Scholars. That means that a student can
14 graduate from high school and have all of their education paid
15 for, all the way up to Ph.D.

16 Q Okay. Well, the naming of the schools, that was an issue
17 when you were on the school board?

18 A Yes, sir. It was. They wanted the high school to be
19 called McCluer South. We already had a McCluer North, and we
20 had a McCluer, and they wanted it to be called McCluer South.
21 And we had many, many board members -- I'm sorry. We had many
22 board meetings where the room was just filled with people to
23 come up to the mic and tell their reasons why they wanted the
24 school to be called what they wanted it to be called.

25 We had some people from Berkeley saying it should

1 just be called Berkeley High School. Some people said it
2 would be only fair that it should be called McCluer South
3 because it was no longer in the city of Berkeley; it was in
4 Ferguson, because that's the space where they could find to
5 build the high school in the district.

6 But anyway, we finally came to a compromise and named
7 it McCluer South-Berkeley. But people were very, very adamant
8 about how and what that school should be called.

9 Q Well, do you think that the African-American communities
10 are adequately represented on the school board today?

11 A No, sir.

12 Q And tell me why that's your view.

13 A Well, we do have two wonderful ladies on the board: Dr.
14 Thurman, she was elected recently; and a year after her, Dr.
15 Graves. But we need more to reflect the population of the
16 students in that district.

17 Q Okay. Now, you've been involved in politics for many,
18 many years?

19 A Long time. Yes, sir.

20 Q Yeah. And do you have a view one way or another as to
21 whether or not voting is racially polarized in the school
22 district elections?

23 MS. ORMSBY: Objection, Your Honor. Calls for a
24 legal conclusion.

25 THE COURT: Lay a foundation for her to give an

1 opinion, if you can.

2 MR. MCDONALD: I will, Your Honor. I'll try.

3 THE COURT: I mean, that's a lot of foundation.

4 Q (BY MR. MCDONALD) Well, have you had an opportunity to
5 observe and form an opinion about how blacks and whites tend
6 to vote for school board elections based on your experience,
7 long-time experience running for public office?

8 MS. ORMSBY: I'm going to object as speculation.

9 THE COURT: You have to lay a better foundation than
10 that -- what data she looked at, what analysis has she made.

11 Q Well, have you had an opportunity to look at election
12 returns to determine who wins?

13 A Yes, sir. I've looked at election returns that are on --
14 that are published in the newspaper.

15 Q And have you been able to form any opinion about racial
16 bloc voting based on your analysis of those elections?

17 MS. ORMSBY: Objection, Your Honor. Race is not
18 included in the election returns.

19 THE COURT: I'll take it for what it's worth, but the
20 point is well taken. Unless it's -- you know.

21 Q Well, for example, what about in Berkeley? Were you able
22 to determine the election results or the number of votes
23 people get from residents of Berkeley, whether they were white
24 or black candidates?

25 A Yes, sir. I've been able to do that.

1 Q And who tends to get the black votes? White candidates
2 or black candidates?

3 A Black candidates tend to get the black votes in Berkeley.

4 Q And what about are you familiar with any white
5 jurisdictions or precincts and who they tend to vote for?

6 A No, I'm not.

7 Q Okay. Well, do you base your opinion about racial bloc
8 voting based on your analysis of the voting in the
9 majority-black areas?

10 A Yes, sir.

11 Q And what about other than Berkeley?

12 A I look at, you know, there are quite a few people who are
13 African American who do live in Ferguson, and I look at those
14 numbers to see how many of them or, you know, how many votes
15 there are, but I can't tell if they're black or white.

16 Q Yeah. One last question. Have you observed any subtle
17 or overt racial appeals in campaigns for the school board?

18 A Campaigning? No, I have not, because they all campaign
19 the same way: You know, robocalls, telephone calls, passing
20 out leaflets, and speaking at the different forums that are
21 held district-wide. And so that answer is no.

22 Q Well, do white candidates -- candidates for the school
23 board come and campaign in person in places like Berkeley?

24 A Yes. They pass out their literature, and I've seen them
25 knock on doors. Yeah, they knock on my doors. They're not

1 afraid to come.

2 Q Well, did you campaign in the white areas when you --

3 A I most certainly did, yes.

4 Q What kind of response did you get?

5 A The response I got were polite responses, like "I'm still
6 considering" or "I vote for you all the time." I never really
7 got someone who was very belligerent, ill-mannered, and I
8 guess it's because I'm not ill-mannered when I speak to them.

9 Q Yeah. But you, nonetheless, didn't win your last
10 election?

11 A I most certainly did not.

12 Q Thank you.

13 A I wanted to, but I didn't.

14 MR. MCDONALD: Well, you may have some questions.

15 THE COURT: You may proceed.

16 **CROSS-EXAMINATION**

17 **BY MS. ORMSBY:**

18 Q Dr. Graham?

19 A Yes, Cindy.

20 Q It's going to be hard for me to call you "Dr. Graham"; so
21 if I slip and call you "Doris," you won't be offended, will
22 you?

23 A Not at all.

24 Q We go way, way, way, way back, don't we?

25 A Yeah. Worked hard together, uh-huh.

1 Q Dr. Graham, how many times in your -- in every time you
2 ran since 1988, how many times were you endorsed by the FFNEA?

3 A I can't remember the times; that I know the first time
4 and the last time I was not. And two elections I was
5 unopposed; so . . .

6 Q And you stated that even before you were on the board,
7 however, that the FFNEA reached out to you about applying for
8 an appointment; is that right?

9 A No. What happened was they did not reach out to me.
10 What happened was they publicized that anyone who was
11 interested in fulfilling that empty seat to write a letter to
12 them -- I mean to the board -- and let them know. And so I
13 did that.

14 And I said Mr. Jim Clark came to my home -- he was a
15 board member -- to get any kind of information he could get.
16 And I happened to be running for president of Local 420
17 Teachers Union; so I just handed him a brochure that he took
18 back to his board, and they decided not to invite me for an
19 interview.

20 And a couple of days later, I got a phone call from a
21 member of NEA in the leadership who said that, "We told the
22 board we wanted them to interview you."

23 Q Okay. Thank you.

24 THE COURT: Just so I know, you were talking about
25 Local 420 in the city public schools.

1 THE WITNESS: Yes, in the public schools where I
2 worked.

3 THE COURT: Historically, that's AFT as opposed to --

4 THE WITNESS: AFT.

5 THE COURT: -- as opposed to NEA. Okay.

6 THE WITNESS: Yes, sir.

7 Q You were running for president of AFT in your city school
8 district?

9 A Yes.

10 Q And someone from the FFNEA, which is
11 Ferguson-Florissant's union --

12 A Called me.

13 Q Called you. Okay.

14 A Yes. They said even though -- he said that they had
15 talked to the board and they thought it would be a conflict by
16 me being AFT and they were NEA, and they said, no, it won't be
17 a conflict; they're both unions.

18 Q Okay. Thanks.

19 THE COURT: The AFT and NEA haven't always gotten
20 along.

21 THE WITNESS: No, they have not. And how well do I
22 know.

23 Q Now, in 2011, when you ran for reelection, that was quite
24 an anti-incumbent movement that year. Would you agree with
25 that?

1 A Totally agree. I was told that they had decided to get
2 rid of the incumbents; it's time for new blood.

3 Q And when you were on the board just that prior year, you
4 had voted for lifetime health insurance for Mr. Spiegel,
5 correct?

6 A Correct. It was unanimous.

7 Q And that also -- you also included his wife in that,
8 correct?

9 A Yes.

10 Q Now, do the teachers of the school district -- do they
11 have to pay for their insurance after they have retired; do
12 you know?

13 A I don't know specifically, no, huh-uh.

14 Q But if they did, you could understand why the union might
15 be a little upset that the superintendent, who made a lot more
16 money than they did, was getting free insurance and they
17 weren't. You would understand that sentiment, wouldn't you?

18 A I can understand that, but may I say something else?

19 Q I didn't ask you anything else.

20 THE COURT: Your lawyer will get a chance to ask you
21 some follow-up questions. I'm sure it will come up.

22 Q And Mr. Spiegel's wife, she wasn't an employee of the
23 school district; isn't that right?

24 A Correct.

25 Q And isn't it true that that was an election issue that

1 year? All the candidates got a lot of questions about that?

2 A What year are you referring to?

3 Q 2011, when you were running for reelection.

4 A I didn't get a lot of questions about that.

5 Q Did it come up at the forums that you went to?

6 A Yes. And that's about the only place it came up.

7 Q And the forums is where members of the --

8 A District-wide, yeah, where the members of the community
9 could come and hear the candidates speak.

10 Q And I think you already testified you weren't the only
11 incumbent that wasn't endorsed by the FFNEA, right?

12 A Right.

13 Q And the other two that were not endorsed was Jim Clark
14 and Les Lentz?

15 A Correct.

16 Q And what race are they?

17 A They're white.

18 Q And I think you testified as well that the NEA gives you
19 a list of questions prior to you coming to your interview for
20 an endorsement.

21 A Yes.

22 Q Was that always the practice when you ran for the school
23 board?

24 A When I ran, that was the practice.

25 Q And the questions that they give you are the questions

1 they ask you in the interview?

2 A Those questions were generally the same, but the people
3 on the PAC committee, they were given the opportunity to
4 extend the question for clarity.

5 Q Do you believe that the answers to your questions, other
6 than your voting record as an incumbent, was a big
7 consideration in what -- in the FFNEA's decision on who to
8 endorse?

9 A The answers to my questions? Oh, no.

10 Q You don't think so?

11 A No, because --

12 Q Do you think it was your voting record?

13 A No.

14 Q Do you think it was that you had been on the board for a
15 long time?

16 A That's it.

17 Q Okay. You don't think that they didn't endorse you
18 because of your race, do you?

19 A I think they just didn't endorse me because they said it
20 was time for me to go, time for the incumbents to go and get
21 new blood. So because of my race I can't say. I don't know.

22 Q And all the years that you served on the school board,
23 from 1988 until 2011, do you believe that the board did not
24 properly address the needs of the district's students, both
25 black and white?

1 A Because I was at the board table, I would bring up
2 whatever the issue was and it would be addressed. And I felt
3 that if I was not at the table, that it would not have been
4 addressed.

5 Q But the board listened to you, didn't they?

6 A To me, yes.

7 Q And the board -- you had board members that shared your
8 opinion on a lot of things, didn't you?

9 A Correct. Yes.

10 Q And they were -- they weren't African American, but they
11 agreed with you, right?

12 A Yes.

13 Q And you talked about the naming of the two schools.

14 A Yes.

15 Q They listened to you, didn't they?

16 A Yes.

17 Q And they didn't name the school after a plantation owner,
18 did they?

19 A No, they did not.

20 Q And they added Berkeley to the name of the high school,
21 didn't they?

22 A Correct.

23 Q When you were on the board all those years, did the board
24 ever publicly discuss a personnel issue?

25 A Publicly, no. Well, I'm saying no because, you know, you

1 know, we went to training. I went as high as you could go to
2 get a master's from Missouri School Board Association. That's
3 one thing you learn. You do not take anything in public that
4 has to do with personnel unless there's a decision by the
5 board to do it.

6 Q And you said you went to that big board meeting that they
7 had to hold in McCluer North gym?

8 A Yes.

9 Q Did the board sit there and listen to every single
10 comment that was made?

11 A Every one, yes.

12 Q You talked a little bit about when you were talking about
13 single-member -- well, let me hit on something. You talked
14 about the drumming that you went to, the drumming caucus you
15 went to, I believe you called it, at the National School Board
16 Association convention.

17 A Yes.

18 Q And that Mr. Henson brought that up at a school board
19 meeting. But it's not really the job of the school board to
20 institute a program in the high school with regard to drumming
21 at the lunch periods, right?

22 A It's not our job to do that, but it's our job to report
23 when we come back from a convention what things impressed us
24 that we might be able to try in our own district.

25 Q And you never heard back from any of the high school

1 principals about wanting to try to institute that?

2 A No, ma'am.

3 Q But it would be their job to do that, right? The
4 principals of the schools to bring back --

5 A I would imagine so. I don't know. I know we give our
6 principals a lot of autonomy how to run their schools and how
7 to -- who to hire and all of that.

8 Q And you talked about how Paul Morris helped you out
9 before he was on the school board and he was a teacher and
10 part of the NEA. He helped you out with your elections; is
11 that right?

12 A Well, yes. He helped all of those who were -- he was the
13 go-to person for those who were endorsed by FFNEA.

14 Q And what race is Paul Morris?

15 A White.

16 Q And you believe that you had a lot of white voters that
17 voted for you in your elections, don't you?

18 A Well, I know I couldn't have won without them.

19 Q You had -- you know that you had white households that
20 put your signs in their yard?

21 A Yes.

22 Q And you had white voters tell you that they voted for
23 you?

24 A Yes.

25 Q You talked when you were giving your opinion about

1 single-member districts versus an at-large election, you gave
2 the example of the Ferguson City Council, didn't you?

3 A Yes.

4 Q And until this last election, the Ferguson City Council
5 only had one African-American council member; isn't that
6 right?

7 A I believe so.

8 Q And it's your understanding that Ferguson City Council
9 members run in single-member districts? The city is divided
10 up?

11 A Yes.

12 Q And yet they only had one African American until the last
13 election?

14 A Now they have two.

15 Q Now they have two.

16 I don't have anything further. Thank you, Your
17 Honor.

18 THE WITNESS: Thank you.

19 THE COURT: Any redirect?

20 MR. MCDONALD: I just have, I think, two questions,
21 Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MR. MCDONALD:**

24 Q In 2011, when you ran for reelection, do you have any
25 opinion one way or another on whether you had the support of

1 the black community?

2 A Yes, I did have the support of the black community.

3 Q And tell me why you know that to be true.

4 A I know that to be true because in my campaigning I was
5 told -- I was promised that they would vote for me. My --
6 through the churches, through the community. I had key people
7 who were phone banking for me and writing down "yes, I will
8 vote for her" or "no, I won't vote for her," and I had so many
9 yes's and very few no's.

10 Q Okay. And one last question. Did you vote in 2011 for
11 Spiegel's health insurance?

12 A It was unanimous. Yes, I did.

13 MR. MCDONALD: Yeah. Okay. That's all I have, Your
14 Honor.

15 THE COURT: Thank you, ma'am.

16 MR. MCDONALD: Oh, wait just one minute.

17 THE COURT: I think they want to debate MSTA versus
18 AFT now.

19 THE WITNESS: But I wanted to say something else, but
20 like you said, I wasn't asked; so . . .

21 THE COURT: They can't even decide themselves what to
22 ask; so . . .

23 MR. MCDONALD: I don't want to be repetitive.

24 THE COURT: That's all right. It's too late.

25 Q (BY MR. MCDONALD) Co-counsel are asking me. Do you recall

1 who the FFNEA endorsed in 2013? Was it Hogshead?

2 A Yes, sir.

3 Q Okay. Do you recall whether -- well, you said that
4 Hogshead was on in 2011, yes?

5 A Yes. She was on. And we had worked on the board, you
6 know, together for a long time, from the time she was elected,
7 and we did a lot of great things together. But at one of our
8 executive board meetings she just told me, she said, "Some of
9 you around this table will not be elected."

10 Q Well, Hogshead voted for Spiegel's health insurance too?

11 A Yes, sir. Unanimous --

12 MR. MCDONALD: Okay. Thank you very much.

13 A -- vote.

14 THE COURT: Thank you, ma'am. You may step down.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Appreciate your time.

17 THE WITNESS: Thank you so much.

18 THE COURT: If you would call your next witness.

19 MR. ROTHERT: Our next witness is going to take quite
20 a bit of time; so could we maybe do some deposition
21 designations?

22 THE COURT: I'm not going to tell you how to try your
23 case. If you want to read some depositions, that's fine.

24 MR. ROTHERT: I would like to read the deposition.
25 Okay. If we can get ready.

1 THE COURT: All right.

2 MR. ROTHERT: It will be very exciting.

3 MS. WILCOX: We will be starting with the deposition
4 of Paul Thomas Morris. It's page 5, starting at line 19
5 through 22 on that page.

6 **(DEPOSITION EXCERPTS OF PAUL THOMAS MORRIS READ INTO THE**
7 **RECORD.)**

8 MS. ORMSBY: Your Honor, I'm just curious. We have
9 counterdesignations. Would it be appropriate to read those in
10 now as well, or do you want to go back and read our
11 counterdesignations later?

12 THE COURT: Do you mind reading them all together?
13 Might as well. It will make more sense.

14 MS. EBENSTEIN: Do you want all of them? Do you want
15 all of the counterdesignations?

16 MS. ORMSBY: I think in this case where it just
17 flows, it just makes sense to just put it all in at the same
18 time, you know.

19 MS. EBENSTEIN: Fine with me.

20 MS. ORMSBY: And it's fine if you read them. I don't
21 have a --

22 MS. WILCOX: Fine. I stopped at line 11. I'll pick
23 up back at 12.

24 THE COURT: All right.

25 **(CONTINUATION OF THE DEPOSITION EXCERPTS OF PAUL THOMAS MORRIS**

READ INTO THE RECORD.)

MS. WILCOX: This ends this deposition.

THE COURT: Very good. I would say it's magically 12:30, but it's not. It's 12:45. We will reconvene at 1:40. Thank you very much.

(COURT RECESSED FROM 12:45 PM UNTIL 1:55 PM.)

THE COURT: All right. Any announcements before we begin?

MR. ROTHERT: No.

MS. ORMSBY: No, Your Honor.

THE COURT: If you would call your next witness, please.

MR. ROTHERT: The plaintiffs for their next witness call Dr. David Kimball.

THE COURT: If you would step forward, sir, and be sworn.

(WITNESS SWORN BY THE CLERK.)

THE COURT: Are you ready?

MS. ORMSBY: Yes, Your Honor.

THE COURT: You may proceed.

**DAVID KIMBALL,
HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
FOLLOWS:**

DIRECT EXAMINATION

BY MR. ROTHERT:

1 Q Good afternoon. Could you please state your name for the
2 record?

3 A David Kimball.

4 Q Dr. Kimball, are you currently employed?

5 A Yes, at the University of Missouri-St. Louis.

6 Q What is your job title at the University of Missouri-St.
7 Louis?

8 A I'm a Professor of Political Science and Director of
9 Graduate Studies in the Department of Political Science.

10 Q How long have you been a Professor of Political Science
11 at the University of Missouri-St. Louis, Dr. Kimball?

12 A I've been at UMSL since 2001. I've been a full professor
13 since 2012.

14 Q Prior to being a Professor of Political Science at the
15 University of Missouri-St. Louis, were you a Professor of
16 Political Science elsewhere?

17 A Yes. I was an Assistant Professor of Political Science
18 at Southern Illinois University in Carbondale.

19 Q What are some of the courses you've taught, particularly
20 at the graduate level?

21 A I teach courses on American government, public opinion,
22 elections, and research methods both at the undergraduate and
23 graduate level.

24 Q Turning to your own education, what's the highest degree
25 you've obtained?

1 A Ph.D. in political science.

2 Q Where did you receive your Ph.D. in political science?

3 A At Ohio State University.

4 THE COURT: You didn't say that right, did you?

5 Q It's "thee." (As pronounced.)

6 A "Thee" Ohio State. Sorry.

7 Q "Thee" Ohio State University, for the record. Okay. And
8 what year -- when did you receive your Ph.D. in political
9 science from "Thee" Ohio State University?

10 A 1997.

11 Q Where did you attend for undergraduate studies?

12 A Brown University.

13 Q You've co-authored a number of refereed books, correct?

14 A Yes. I've co-authored three and co-edited one.

15 Q And what makes a refereed book different from *Fifty*
16 *Shades of Grey*?

17 A Well --

18 THE COURT: From which end of the prism do you want
19 him to talk about?

20 A I'm only familiar with the academic publishing process.

21 Q What makes a refereed book different?

22 A Yeah. A refereed book means that, before it's accepted
23 for publication, the manuscript is sent out to other scholars
24 to review and recommend publishing it.

25 Q And did you say how many books you've authored or

1 co-authored?

2 A I've co-authored three and co-edited one book.

3 Q And what were those? Can you describe those books?

4 A One -- the co-edited book's called *Controversies in*
5 *Voting Behavior*. One of the co-authored books is called
6 *Helping America Vote: The Limits of Election Reform*. Another
7 of the co-authored books is called *Why Americans Split their*
8 *Tickets*.

9 Q And the co-edited book?

10 A Another co-authored book is called *Lobbying and Policy*
11 *Change*.

12 Q So all those books have to do with voting behaviors or
13 interest groups?

14 A Right. Three of them deal with voting in elections and
15 the fourth with interest groups and lobbying.

16 Q And what's a refereed article?

17 A That's an article published in an academic journal, and
18 the same kind of peer review process applies: Scholars review
19 it first and recommend either to publish it or not.

20 Q Do you know how many refereed articles you've authored or
21 co-authored on voting behavior generally or on American
22 politics?

23 A Overall, I think I have about 20 or so refereed journal
24 articles. Probably, I don't know, 12 to 15 of them deal with
25 voting elections.

1 Q Are you on the editorial board of any political science
2 journals?

3 A Yes. *Election Law Journal*.

4 Q Do you do journal manuscript reviews for any political
5 science journals?

6 A Yes.

7 Q And what is a journal manuscript review?

8 A That's the other side of the peer review process. So
9 when people send manuscripts into journals, I'm sometimes one
10 of the reviewers that reads them and recommends to publish
11 them or not, make suggestions to the authors.

12 Q How many political science journals do you provide
13 manuscript reviews for?

14 A Several journals. I probably do maybe about 10 to 12
15 manuscript reviews a year.

16 Q Can you provide by name some examples of the journals for
17 which you provide manuscript review?

18 A Yes. *American Political Science Review*, *Journal of*
19 *Politics*, *American Journal of Political Science*, *Election Law*
20 *Journal*. Those are some.

21 Q Okay. Have you testified as an expert witness before?

22 A Yes.

23 Q Does that include in this courthouse?

24 A Yes. I was an expert witness in one case in this
25 courthouse. That dealt with drawing district lines for the

1 St. Louis County Council.

2 Q Have you testified as an expert in Missouri state courts?

3 A Once. I testified in a case where I examined the
4 compactness of congressional districts.

5 Q And have you served as an expert witness in federal
6 courts in other states?

7 A Yes. I think in maybe three or four other cases I filed
8 expert reports.

9 Q Could you look in your binder there at Plaintiffs'
10 Exhibit 48. Is that something that you recognize?

11 A Yes. That's my expert report for this case.

12 Q And if you would hop ahead to the attachment. It's the
13 16th page of Exhibit 48. Can you tell me what that is?

14 A That's the copy of my CV, my curriculum vitae.

15 Q Given your education and experiences you discussed today
16 and as set forth more completely on Plaintiffs' Exhibit 48
17 which has already been admitted into evidence, do you have a
18 general area of professional expertise?

19 A My general area of expertise is American politics, voting
20 in elections, public opinion, and research methods.

21 Q Okay. Do you have a particular expertise in elections or
22 election administration at a particular level?

23 A More recently of the state and local level, with
24 elections at the state and local level, yes.

25 Q Are you familiar with something called the federal Voting

1 Rights Act?

2 A Yes.

3 Q And what's your understanding of what that is?

4 A It was originally passed, I think, in 1965, and it
5 generally prohibits election practices that discriminate on
6 the basis of race or color or language.

7 Q Can you provide me with an example of an election
8 practice that would have been present in 1965 that
9 discriminated on the basis of race?

10 A Like literacy tests or poll taxes would be two prominent
11 examples.

12 Q How did literacy tests discriminate on the basis of race?

13 A Well, the effect was that voter registration rates and
14 voter turnout rates among African Americans were much lower
15 than among whites in the places that use that practice.

16 Q And what about poll taxes?

17 A Same thing. Voter registration rates and turnout rates
18 among African Americans were much lower than among whites in
19 the places that used that practice.

20 Q Have you ever heard the term "Senate factors" as related
21 to cases brought under the Voting Rights Act?

22 A Yes, I have.

23 Q What does that mean to you, Senate factors?

24 A I think that applies to a report from the Senate
25 Judiciary Committee that went along with the 1982

1 reauthorization of the Voting Rights Act.

2 Q And were you asked to form an opinion about how many --
3 or how some of those factors, those Senate factors, operate in
4 the scheme used to elect members to the school board for the
5 Ferguson-Florissant School District?

6 A Yes.

7 Q And are there factors about which you've been able to
8 form an opinion within a reasonable degree of certainty?

9 A Yes. Some of the factors was dealing with the degree of
10 racially polarized voting in the district, the degree to which
11 minority candidates win election to seats in the district.
12 What else? Exclusion of minority candidates from slating
13 processes, whether there's a history of discrimination in the
14 area that's at play.

15 Q I know we asked you about a lot of factors.

16 A Yeah. Those are the main numbered ones. Oh --

17 Q What about --

18 A Lack of responsiveness. You know, the unnumbered
19 factors, the lack of responsiveness on the part of elected
20 officials and whether the election practice was tenuous.

21 Q You've identified Exhibit 48 as your original expert
22 report in this case, correct?

23 A Yes.

24 Q Did you read your report before you signed it?

25 A Yes.

1 Q Do you always read your expert reports before you sign
2 them?

3 A Yes.

4 Q Does Exhibit 48 still represent your opinions?

5 A Yes.

6 Q You also submitted a rebuttal report; is that correct?

7 A Yes.

8 Q If you could look at Exhibit 49, Plaintiffs' Exhibit 49,
9 which also has already been admitted into evidence, can you
10 identify what Plaintiffs' Exhibit 49 is?

11 A It's my rebuttal report as well as some additional
12 endorsement information that I --

13 Q That you relied on?

14 A Yeah.

15 Q Okay. Does Exhibit 49 still represent your opinions?

16 A Yes.

17 Q Based on your analysis of those factors that you've
18 looked at in your reports, are you able to form an opinion
19 whether the use of at-large elections held in April to select
20 members of the Ferguson-Florissant School District's board
21 deprives African-American residents of the Ferguson-Florissant
22 School District of an equal opportunity to influence the
23 outcome of those elections?

24 A Yes.

25 Q And what is your opinion?

1 A That the use of at-large elections in April for the
2 Ferguson-Florissant School District implicate several of the
3 Senate factors in a way that deprives African-American voters
4 an equal opportunity to elect candidates of their choice.

5 Q All right. In your report you reference the calculus of
6 voting; is that right?

7 A Yes, the calculus of voting.

8 Q So to try to understand better, we have a little slide
9 here. If you can look at that and explain what is the
10 calculus of voting. What is that formula, and what does it
11 represent?

12 A In brief, it's sort of a cost-benefit, basically,
13 analysis of the decision of whether to vote or not. This
14 formula, likelihood of voting equals P times B minus C is one
15 that's frequently used in political science. The letter "P"
16 represents the probability that one's own vote might determine
17 the outcome of an election. The letter "B" represents the
18 benefits one would receive of seeing one's preferred
19 candidates win, win election and possibly implement policies
20 that the voter preferred. And the letter "C" represents the
21 costs of voting, which include information costs of learning
22 about the candidates running for office, the costs associated
23 with the administrative process of registering to vote,
24 finding out where one's polling place is, getting away from
25 work to go vote, things like that.

1 Q And is this idea of a calculus of voting to help
2 determine the likelihood of voting -- is that something that's
3 commonly accepted and commonly used in your field?

4 A Yes. In political science, yes.

5 Q Why is the calculus of voting important?

6 A It's important -- the basic cost-benefit framework
7 indicates that for many people the decision of whether to vote
8 or not can be a close call, and that is that relatively small
9 changes in either the benefits or the cost side of the
10 equation can substantially increase or decrease the likelihood
11 of voting in an election.

12 Q Do these small changes that you're talking about that
13 can -- small changes in benefits or costs that can have
14 dramatic changes on the likelihood of voting, or substantial
15 changes in the likelihood of voting, do those have a more
16 pronounced effect with certain types of voters?

17 A Yes. Particularly important for voters with less
18 education, less income, people who are less habitual voters.

19 Q Why is that?

20 A Partly because -- mainly because on the cost side there
21 is a strong correlation between education and voting, between
22 income and voting; so people with lower levels of those
23 resources, it's a little more difficult to overcome the cost
24 that is associated with registering and turning out to vote,
25 learning about candidates and so forth.

1 Q And looking at the big picture before we get into the
2 different factors, can you tell me how the calculus of voting
3 plays out in the Ferguson-Florissant School District?

4 A Yes. I mean, I think several of the Senate factors sort
5 of interact with the type of election system used in the
6 Ferguson-Florissant School District, particularly the at-large
7 and the April scheduling, in a way that may sort of weigh the
8 cost side in such that it may be more burdensome on
9 African-American voters and make it more difficult for them to
10 influence the outcome of elections.

11 Q Do those factors also intersect with the socioeconomic
12 conditions in the district?

13 A Yes.

14 Q And does that also make voting more burdensome for
15 African Americans, or tend to?

16 A Right. Socioeconomic conditions in district -- I think
17 Dr. Gordon yesterday testified that there's a racial disparity
18 in income and wealth and education levels, and those factors
19 come into play here.

20 Q Could you look at Plaintiffs' Exhibit 63, which is in
21 your binder and on the screen, but it may be hard to read on
22 the screen. Do you know what this is? And just for the
23 record, Plaintiffs' Exhibit 3 has already been admitted into
24 evidence. But do you know what it is?

25 A Looks like it's a report from the United States Census on

1 voting and registration by race and sex from November 2014.

2 Q Could you look at the information for the state of
3 Missouri and tell me what page that's on?

4 A Missouri's probably on the sixth page or so back. My
5 pages aren't numbered.

6 Q I agree. Sixth page. What's the registration rate,
7 according to this data, for African Americans in Missouri?
8 Voter registration rate.

9 A Give me a second here. For black alone, it's 67.9
10 percent. For black alone or in combination, it's 68.5
11 percent.

12 Q What's the voter registration rate for whites in
13 Missouri?

14 A For white alone, it's 73.1 percent. For white alone or
15 in combination, it's 72.8 percent.

16 Q I'd like to talk to you -- ask you some questions about
17 the voting practices and procedures that enhance the
18 opportunity for discrimination. Based on your expertise, are
19 there any features of the elections for the
20 Ferguson-Florissant School District's school board that
21 increase the opportunity for discrimination against the
22 African-American residents and voters?

23 A The most important ones are the at-large feature and the
24 April -- the off-cycle scheduling of elections for the
25 Ferguson-Florissant School Board.

1 Q Let's start with the feature of at-large elections. Is
2 there research regarding whether racial and ethnic minority
3 voters have more difficulty electing a candidate of their
4 choice in local at-large elections rather than in local
5 subdistrict elections?

6 A Yes. There is political science research that finds that
7 racial minorities have more difficulty electing candidates of
8 their choice in at-large local elections than in at-large
9 district elections.

10 Q Do you know why that is?

11 A Well, yeah. The general explanation is that if there's
12 racially polarized voting, that is, if white voters are
13 supporting different candidates than, say, African-American
14 voters, then a white majority can basically outvote the
15 African-American minority and see the -- so that the
16 white-preferred candidates tend to win and the candidates
17 preferred by African Americans then tend to lose.

18 Q Now, if someone were to characterize that opinion that
19 you just gave as being that in an at-large election system a
20 racial or ethnic minority can effectively determine the winners
21 of all elections if there is racially polarized voting, would
22 that be an accurate representation of your opinion or your
23 report?

24 A Can you ask that again? I'm not sure I got the whole
25 question.

1 Q Well, you mentioned that if there is racially polarized
2 voting in at-large elections, a white majority can effectively
3 determine the winners of all the seats.

4 A Uh-huh.

5 Q Is it fair to characterize it to say the exact opposite
6 is true; that if you have an at-large election, racially
7 polarized voting, that a racial or ethnic majority could
8 determine all the winners?

9 A Not necessarily. I think my view you would want to see
10 the racial or ethnic group be a super majority to be able to
11 control at-large elections.

12 Q Okay. What's a super majority?

13 A Much higher than 50 percent. Say, like, 70 percent. For
14 a number of reasons. So we just looked at the registration
15 rates, and Missouri registration rates tend to be lower for
16 African Americans than for whites. Voter turnout in local
17 elections tends to be lower for racial and ethnic minorities
18 than for whites.

19 In order to win elections, it takes also some
20 coordination, recruiting candidates, coordinating support that
21 impose costs and take organizing and take resources. And so
22 being just above 50 percent is probably, in my view, not
23 enough to ensure control of the outcome of those -- of
24 at-large elections.

25 Q Okay. You mentioned that in addition to at-large

1 elections there was another voting practice or procedure for
2 the Ferguson-Florissant School District elections that enhance
3 the -- that make it more difficult for African Americans to
4 have an opportunity to elect the candidate of their choice.

5 A Right. This is the April -- by state law in Missouri,
6 municipal -- local elections are in March and April, or what
7 we call "off-cycle" in political science. So an on-cycle
8 election is one that's held in November of an even-numbered
9 year and coincides with usually major statewide and national
10 offices like President, Congress, and governor.

11 Those on-cycle, or November of even-numbered
12 elections, tend to have much higher voter turnout, voter
13 participation than off-cycle elections like one held in April
14 at a different time of year.

15 Q Do they have -- do on-cycle elections have more benefits
16 for voters?

17 A On the turnout -- so part of the reason turnout is higher
18 in those occasions is the benefit side is more clear. There's
19 more information readily available to voters about the
20 candidates.

21 Q Okay. How do off-cycle elections -- how do they, well,
22 either enhance the opportunity for discrimination or make it
23 more difficult for African Americans to elect candidates of
24 their choice?

25 A They tend to make it more difficult. Those off-cycle

1 elections there's less news coverage. There's generally less
2 outside information available to voters about the candidates
3 running for office. And so it takes more -- the cost side is
4 a little bit higher for voters. It takes more effort on their
5 part to find out who's running, find out information about the
6 candidates and their policies.

7 Q Now, in addition to at-large and off-cycle elections, are
8 there other voting practice and procedures in the
9 Ferguson-Florissant School District School Board elections
10 that make it harder for African Americans to elect candidates
11 of their choice?

12 A The staggered part -- I think this is not as important a
13 factor as the at-large and the April scheduling, but there's
14 some research indicating when all seats in a local legislative
15 body are up for election at the same time, voter participation
16 tends to be higher. In that case, the perceived benefits are
17 more evident. All the seats are at play. That means majority
18 control is at stake in that election. There's more candidates
19 running. There's more campaigning going on. So voters are
20 likely to have more information about the election.

21 Q How does that change voter participation?

22 A So you tend to get higher voter participation when all
23 the seats are up at the same time in the same election rather
24 than stagger, rather than two or three seats being up in one
25 election and then another two in the next election and so

1 forth.

2 Q Okay. And thinking again about that calculus of voting,
3 determining the likelihood of voting for African Americans,
4 how do off-cycle, at-large, staggered elections in the
5 Ferguson-Florissant School District -- how does that
6 contribute to the calculus of voting for African Americans?

7 A I think it can contribute to sort of a disproportionate
8 lower turnout among African-American voters in those kind of
9 at-large, off-cycle, staggered local elections than among
10 white voters.

11 Q Can you explain why.

12 A For one, there's political science research examining
13 local elections that have found that to be the case. I think
14 I sort of touched on this already; that in the case of in this
15 calculus of voting framework in those at-large, off-cycle,
16 staggered elections, the costs tends to be a bit higher than
17 in other elections. And given the socioeconomic disparities
18 in the district and in the region, that cost-benefit framework
19 then tends to work against African-American voters.

20 Q And is there, in fact, lesser turnout for
21 African-American voters compared to white voters for the
22 at-large elections, those at-large, staggered, off-cycle
23 elections in the Ferguson-Florissant School District?

24 A The turnout in those elections is certainly lower than it
25 is in presidential elections or midterm, November midterm

1 elections.

2 Q What about is there lesser turnout for African Americans
3 as compared to white voters in those elections?

4 A Oh, specifically in the Ferguson-Florissant School
5 District?

6 Q Yes. Yes.

7 A I think the evidence from a couple of the reports finds
8 that in some elections voter turnout is lower among African
9 Americans than among whites, and in other elections it's more
10 similar or indistinguishable.

11 Q How do you determine voter turnout?

12 A The number of ballots cast divided by the voting-age
13 population.

14 Q When you say "ballots cast," do you mean the number of
15 voters?

16 A Yeah. It's the same, yeah. The number of ballots cast
17 indicates how many voters showed up to vote.

18 Q So you're not counting the number of votes in a given
19 election?

20 A Right.

21 Q I guess what I'm asking is do you have to adjust in
22 elections like the Ferguson-Florissant School District where
23 voters are permitted to cast more than one vote?

24 A Right. So it's distinct from the number of total votes
25 cast in elections like the Ferguson-Florissant School District

1 where voters have up to two or three votes cast. Ballots cast
2 is a separate quantity that the election board reports that
3 just indicates how many voters there were.

4 Q And for turnout you use ballots cast or votes cast?

5 A To measure turnout, I use ballots cast as the numerator.

6 Q What method did you use to analyze voter turnout in
7 contested elections for the Ferguson-Florissant School
8 District board? Which one did you use first?

9 A Oh. I use homogeneous precinct analysis. I mean how to
10 estimate the turnout by race --

11 Q Okay.

12 A -- I used homogeneous precinct analysis, and then I also
13 used ecological inference estimates from Dr. Rodden's report.

14 Q And Dr. Rodden's report -- is that Plaintiffs' Exhibit 56
15 in your binder?

16 A Yes.

17 Q Does Dr. Rodden also use homogeneous precinct analysis to
18 estimate voter turnout or just ecological inference estimates?

19 A I think he just uses the ecological inference.

20 Q If you could look -- we'll put it on the screen here, but
21 Exhibit 49, Table 3 on page 6. And this is your rebuttal
22 report, correct?

23 A Yes.

24 Q Can you describe what this table shows?

25 A The right -- so it's examining each of the last five

1 elections to the Ferguson-Florissant School Board. The
2 numbers in the far two right-hand columns are estimates from
3 Dr. Rodden's report on white turnout and African-American
4 turnout --

5 Q Okay.

6 A -- in each of those elections.

7 Q And the two columns after the year?

8 A Those are homogeneous precincts analysis that I did. So
9 the first column computes voter turnout in the precincts where
10 African Americans comprise more than 90 percent of the
11 voting-age population, and then the next column indicates
12 voter turnout in the precincts where African Americans
13 comprise less than 10 percent of the voting-age population.

14 Q So the first column is the year; the second column is
15 voter turnout in homogeneous. Is that right?

16 A Heavily African-American precincts.

17 Q Okay. Heavily African-American precincts. The third
18 column is voter turnout in heavily white precincts. And --

19 THE COURT: It doesn't really say that. That's a
20 question.

21 Q Is the third column --

22 A Turnout in heavily white precincts.

23 Q Okay.

24 A In each of those elections.

25 Q And the fourth column is what?

1 A Is Dr. Rodden's estimate of African-American turnout in
2 each of those elections.

3 Q And the fourth column?

4 A Is Dr. Rodden's estimate of white turnout in each of
5 those five elections.

6 Q Now, this is labeled "precincts less than 10 percent
7 African American," the third column over?

8 A Yes.

9 Q In the Ferguson-Florissant School District, does a
10 precinct that's -- what is the racial make-up a precinct that
11 is less than 10 percent African American?

12 A It's over 90 percent non-African American; so it's
13 heavily white.

14 Q Does non-African American in the Ferguson-Florissant
15 School District generally mean white?

16 A Yes.

17 Q So based on the homogeneous precinct analysis that you
18 conducted on turnout, were you able to conclude in your report
19 the homogeneous analysis of -- precinct analysis you did, were
20 you able to conclude whether there's a difference in turnout
21 based on race for Ferguson-Florissant School District's
22 at-large, off-cycle elections?

23 A Yeah. I mean, in my analysis, in four of those five
24 elections, by my estimates white turnout was higher than
25 African-American turnout, and in just one in 2012 African

1 turnout was higher than white turnout. In Dr. Rodden's
2 estimates, I think the racial differences in turnout are not
3 quite as large.

4 Q Okay.

5 A But he finds in at least a couple of them white turnout
6 exceeds African-American turnout and a couple of the others
7 they're very similar.

8 Q Okay. He, like you, does find white turnout exceeds
9 black turnout in four of the five elections; is that correct?

10 A Yes. If you're just looking at the point estimates. If
11 you include the confidence intervals, then it's a little
12 bit -- and we're not certain how much different they really
13 are.

14 Q Okay. Is it helpful to do both homogeneous precinct
15 analysis and ecological inference estimates to measure
16 turnout?

17 A I think the homogeneous precinct analysis is a helpful
18 supplement to the ecological inference to examine turnout or
19 candidate support. So it is basically three different -- what
20 we're doing here is we're trying to make inferences about
21 individual-level behavior: How did African-Americans votes;
22 what percentage of them voted out; how did white voters vote;
23 and what percentage of them voted? We're trying to make
24 individual-level inferences based on aggregate data.

25 And so because people vote a secret ballot, we can't

1 observe them in the voting booth to know exactly how many
2 white people vote and how many African-Americans voted and who
3 they selected. So we generally have to rely on aggregate data
4 at the precinct level to try and make these inferences. And
5 so each method is making an estimate. Each method has --
6 makes assumptions. Each method has some advantages and
7 disadvantages. There's no guarantee that any of these methods
8 gives us the exact truth or gives us the --

9 Q So is it helpful to use more than one method?

10 A I think it's useful, particularly to use homogeneous
11 precincts, to supplement the ecological inference.

12 Q How does that help?

13 A Well, the advantage of homogeneous precincts is if you're
14 looking at heavily African-American precincts and heavily
15 white precincts, because of the homogeneous nature of them
16 they give you a pretty good -- pretty confident evidence of
17 how members of that racial group voted at least in those
18 precincts.

19 I mean, the big disadvantage of the homogeneous
20 precincts analysis is you're leaving out other precincts that
21 are more racially mixed. So you're not examining all the
22 precincts. You're leaving out some of the data.

23 Q What are the disadvantages to using ecological inference
24 estimates for turnout?

25 A So I mean one advantage, which is consistent with all

1 these, is that we're using aggregate data to try and make
2 estimates about individual behavior. The challenge with
3 ecological inference is -- and, I mean, I guess I will say
4 that -- so the third method is ecological regression, which we
5 haven't discussed yet. That's one where you're basically
6 fitting the regression means, fitting a straight line to data,
7 data that compares race, racial composition of precincts to
8 some measure of voting behavior.

9 Ecological regression -- one of the big drawbacks
10 with that is it assumes basically a constant voter rate across
11 all precincts. So, for example, it assumes that
12 African-American voters support particular candidate at the
13 same level in every precinct, which probably an unrealistic
14 assumption. And ecological regression can also produce
15 nonsensical estimates that it can estimate for you that over
16 100 percent of white voters voted for a particular candidate
17 or less than zero percent of African-American voters voted for
18 a particular candidate when we know percentages have to be
19 between from zero to 100. You can't go below zero; you can't
20 go below 100 [sic].

21 Ecological inference improves on things because it,
22 number one, it doesn't assume that constant voter rate across
23 all precincts, and it prevents the nonsensical estimates from
24 occurring.

25 I think one critical assumption that ecological

1 inference makes is that the voting quantity that you're
2 estimating is uncorrelated with the racial composition of the
3 precincts you're analyzing, and so if you have reason to
4 suspect that, for example, African-American voters in heavily
5 African-American precincts may vote for different candidates
6 than African-American voters in majority-white precincts, that
7 violates that assumption, and that can lead to the ecological
8 inference estimates to be biased.

9 Q Well, getting back to turnout, when you look --

10 THE COURT: He doesn't want to talk to you about --

11 A Sorry.

12 Q Oh, no. That's fine. I want to talk too. Getting back
13 to turnout, when you confirm or you look at white turnout
14 versus African-American turnout with more than one method,
15 does that help confirm that it's actually -- you're getting
16 accurate numbers instead of just -- it's a result of the
17 method you're using?

18 A Right. I mean, I think you should use some caution with
19 any of these estimates. And so if more than one -- if
20 multiple of these methods are giving you a similar picture, I
21 think you could be a little more confident that you're getting
22 at the way things really are.

23 Q And you said your opinion was that white turnout often
24 clearly exceeds African-American turnout in
25 Ferguson-Florissant School District elections, and sometimes

1 it's indistinguishable. Is that your opinion?

2 A Yes.

3 Q And are you confident in that opinion based on the
4 homogeneous precinct analysis and the ecological inference
5 estimates provided by Dr. Rodden?

6 A Yes. I think his estimates support that conclusion.

7 Q Next I'd like to talk to you about the candidate slating
8 process in the Ferguson-Florissant School District. As a
9 political scientist, do you have an understanding of what
10 slating means?

11 A Slating means organized interests that endorse particular
12 candidates for office.

13 Q What's the benefit of being on a slate?

14 A Well, it's a signal to voters that that particular group
15 wants the endorsed candidate to be elected. Candidates who
16 are endorsed can coordinate with other candidates who are
17 endorsed to promote that information, to share that
18 information to voters through phone calls and mailings and
19 newsletters, and endorsed candidates can also work with the
20 group making the endorsement to promote that information and
21 to help recruit members of the group to volunteer for the
22 candidate's campaign.

23 Campaigns can stand outside -- sometimes stand
24 outside polling place on an election day and hand out slating
25 cards or materials that indicate which candidates are endorsed

1 by that group so that voters have information when they go
2 into the polling place.

3 Q And are those benefits or advantages to being a slate --
4 are they heightened in off-cycle elections?

5 A Yes. Off-cycle elections tend to be lower-information
6 elections so that voters are generally receiving less
7 information about the election, about the candidates than in
8 some other elections. And so the payoff of this endorsement
9 information can be bigger in those kind of local, off-cycle
10 elections.

11 Q Are there any organizations that endorse a slate of
12 candidates in Ferguson-Florissant School District School Board
13 elections?

14 A Yes. The two I found are the FFNEA, the
15 Ferguson-Florissant local of the National Education
16 Association, and the North County Labor Club.

17 Q Are those both labor organizations?

18 A Yes.

19 Q Do you have an opinion whether African-American
20 candidates have the same access to the slating processes in
21 Ferguson-Florissant School District elections as compared to
22 white candidates?

23 A Yes.

24 Q What is your opinion?

25 A That African-American candidates are relatively rarely

1 endorsed by each of these groups compared to white candidates.

2 Q Let's talk about how you reached that conclusion. If you
3 could look at Tab 129. This is Plaintiffs' Exhibit 129. Is
4 this the information you used to determine who the North
5 County Labor Club has endorsed for Ferguson-Florissant School
6 District in contested elections from 2004 to 2015?

7 A Yes. These are from the *Labor Tribune*, which is a
8 newspaper that publishes the Labor Club endorsements.

9 Q And these records were what you used to determine how
10 often candidates were endorsed or who was endorsed by the
11 North County Labor Club?

12 A Yes.

13 MR. ROTHERT: I move for admission of Plaintiffs'
14 Exhibit 129.

15 THE COURT: Any objection?

16 MS. ORMSBY: Object as to hearsay, Your Honor.

17 THE COURT: Overruled on the basis of his testimony
18 as an expert and the type of data he would normally rely on.
19 You should have made that response instead of me, but --

20 Q I was prepared to ask another question.

21 That's the data you rely on that you would normally
22 rely on in your field to determine who was endorsed?

23 A Right.

24 Q Okay. Thank you. Now, we're going to put up a
25 demonstrative exhibit for you here so you don't have to keep

1 leafing through those pages. How were you able to determine
2 the race of candidates, various candidates?

3 A From newspaper reports primarily. In some cases I looked
4 at photos of the candidates that were on the internet or in
5 newspaper reports.

6 Q From 2004 to 2015, how many candidates for the
7 Ferguson-Florissant School District School Board did North
8 County Labor endorse?

9 A In the elections since 2014, I found endorsement
10 information in six of those elections. I didn't find any
11 endorsement information, I think, for the 2004 and 2009
12 elections, but the other six I did.

13 Q Okay. And what was the total number of candidates -- do
14 you know the total number of candidates that were endorsed by
15 North County Labor during that time period?

16 A Thirteen, I believe.

17 Q Okay. And how many of those 13 candidates on the North
18 County Labor slate won their elections?

19 A I think 11 of the 13 were elected.

20 Q And of those 13 candidates that were on the North County
21 Labor slate, how many were white?

22 A Twelve of the 13.

23 Q And of the 13 candidates endorsed by North County Labor,
24 how many were African American?

25 A One.

1 Q Do you know how many candidates there were for
2 Ferguson-Florissant School Board elections in those years?

3 A Total I think there were 19 white candidates and 15
4 African-American candidates. So that would be what?
5 Thirty-four candidates total?

6 Q You consider those similar numbers?

7 A Nineteen and 15? So there were a few more white
8 candidates than African Americans, but they are similar.

9 Q So of the 12 candidates that were endorsed by North
10 County Labor Club who were white, do you know how many won
11 their elections? You can consult your report if you need to.
12 Just tell us what exhibits you're looking at.

13 A I think this is in my original report. Yes. You asked
14 me how many of the --

15 Q -- twelve white candidates endorsed by North County Labor
16 won.

17 A And 11 of the 12 endorsed whites candidates won.

18 Q And the one African-American candidate endorsed by North
19 County Labor?

20 A Did not win.

21 Q So does the fact that the single African-American
22 candidate to have been endorsed by North County Labor didn't
23 win, does that mean that there was no benefit to African
24 Americans or to that African-American candidate from the
25 endorsement?

1 A Not necessarily. I mean, I think the benefits I
2 described earlier mean that that candidate may have earned
3 more votes than otherwise might have occurred but just not
4 enough to get over the top to win election to the school
5 board.

6 Q Could you look at Plaintiffs' Exhibit 130. This exhibit
7 has already been introduced into evidence. Is this the
8 information you used to determine who the FFNEA endorsed?

9 A Yes, plus a couple pages attached to my rebuttal report.

10 Q Okay. So for your initial report, Plaintiffs' Exhibit
11 130 is the data you used to determine who the FFNEA had
12 endorsed?

13 A Right. Yes.

14 Q Okay. And then attached to your rebuttal report, that's
15 Exhibit 49, correct?

16 A Yes.

17 Q And there are two exhibits to your rebuttal report?

18 A Yes.

19 Q And that had FFNEA data for?

20 A Those are for the 2012 and 2013 elections.

21 Q Were you able to find information about FFNEA's slate
22 from 2004 to 2015 like you were for North County Labor, or
23 were there some years you were not able to find?

24 A Yeah. For North County Labor I was able to find the
25 endorsing information for all the elections. For FFNEA it was

1 just for the six elections. That's where I was missing 2004
2 and 2009.

3 Q All right. From 2006 to present, how many contested
4 elections have you found in which FFNEA has endorsed a slate
5 of candidates?

6 A Six elections.

7 Q All right. And do you know how many white candidates
8 there were in those six elections?

9 A In those six elections, yeah, there were 19 white
10 candidates.

11 Q And how many African-American candidates in those six
12 elections?

13 A Fifteen African-Americans candidates. Yeah, so my
14 earlier answer on the Labor Club, I think I gave the wrong
15 numbers.

16 Q Okay. I think you may have.

17 A Sorry about that.

18 Q All right. Upon further reflection, do you think the
19 total number of -- for the years -- I know it's a little
20 confusing because you have data for a different number of
21 elections, but for the North County Labor do you know how many
22 African-American candidates there were in the years for which
23 we discussed?

24 A There were 16 African-American candidates in those -- I'm
25 sorry. No. There were 19 African-American candidates.

1 Q In those years for which we discussed North County Labor
2 endorsements?

3 A Right.

4 Q And how many white candidates were there for those years
5 in which we discussed North County Labor candidates?

6 A There were 23 white candidates in those elections.

7 Q Okay. And so for the years that we have FFNEA data about
8 slates, you mentioned there were six elections and 19 white
9 candidates in those elections and 15 African-American
10 candidates; is that right?

11 A Yes. Uh-huh.

12 Q All right. How many candidates has the FFNEA endorsed in
13 the contested elections since 2006 that you were able to find
14 data about?

15 A In those six elections, FFNEA endorsed 14 candidates.

16 Q How many of those 14 candidates slated by FFNEA since
17 2006 were African American?

18 A Three.

19 Q So 11 of the 14 candidates were white?

20 A Yes.

21 Q So what's the percentage of white candidates receiving
22 the FFNEA -- or never mind that question. What percentage of
23 the candidates who were white and who received the FFNEA
24 endorsement won their elections?

25 A I think all 11 of the white-endorsed candidates won the

1 election of the school board.

2 Q So what percent?

3 A One hundred percent.

4 Q Okay. And what percentage of the African-American
5 candidates who received the FFNEA endorsement won in those
6 years, won their elections?

7 A The three African-American candidates endorsed by FFNEA,
8 all three of them lost; so zero percent.

9 Q Does the fact that no African-American candidate has won
10 with an FFNEA endorsement, at least since 2006, mean that
11 African Americans did not and would not benefit from being
12 endorsed by FFNEA?

13 A No. I mean, as my answer earlier, I think same things --
14 the endorsement may have earned them more votes than they
15 otherwise would have gotten, just not enough to put them over
16 the top.

17 Q Now, you mentioned that there was a report by another
18 expert in this case that you looked at on the other side?

19 A Yes. Yes. Dr. Rodden's report.

20 Q And did you use his figures to determine -- let me ask
21 you this. Did he label candidates as white preferred or
22 minority preferred?

23 A Yes, based on his ecological inference analysis.

24 Q Were you able to use his figures or his labels, rather,
25 of white preferred and minority preferred to consider how

1 candidates are slated by North County Labor or FFNEA?

2 A Yes, I did.

3 Q So we'll go back to talking about North County Labor Club
4 again for a moment.

5 A Okay.

6 Q As Dr. Rodden assigns them labels -- white preferred --
7 from 2004 to 2015, how many white-preferred candidates
8 received the North County Labor Club endorsement?

9 A Eleven.

10 Q And how many of the candidates, the North County Labor
11 candidates that Rodden considers white preferred, how many of
12 them won their election?

13 A All 11 of them won.

14 Q And how many of the candidates that Rodden considers --
15 Dr. Rodden -- considers minority preferred were on a North
16 County Labor slate?

17 A Three. So three of the 18 minority-preferred candidates
18 in those elections were endorsed by the North County Labor
19 Club.

20 Q And how many of the North County Labor Club slatees that
21 Dr. Rodden considers minority preferred -- how many of them
22 won their elections?

23 A Two of the three minority-preferred candidates endorsed
24 by the Labor Club won their elections.

25 Q Okay. Now, let's talk about a top-choice candidate for

1 white voters versus black voters. And you and Dr. Rodden
2 agree that it's never been the same -- white voters' top
3 choice has never been the same as black voters' top choice; is
4 that correct?

5 A Right. I think in each of the elections that he analyzed
6 going back to 2000, the top-choice candidate for white voters
7 was a different candidate than the top-choice candidate of
8 black voters. I think in every instance the top choice of
9 white voters was a white candidate, and in all but one
10 election the top choice of black voters was a black candidate.

11 Q And in the one instance when the top choice of black
12 voters was a white candidate, were there any black candidates
13 running that year, if you know?

14 A No. I think that was 2009. There were no black
15 candidates that year.

16 Q So how did the candidates with the highest estimated
17 support from each racial group fare in getting a spot on the
18 North County Labor Club slate?

19 A Six -- so there were eight elections from 2004 to 2015.
20 In six of those eight elections, the top choice among white
21 voters was endorsed by the North County Labor Club. In those
22 same eight elections, just one of the eight top-choice
23 candidates among African-American voters was endorsed by the
24 North County Labor Club.

25 Q So six out of eight of the top choice for white voters

1 was endorsed by North County Labor, and one out of eight of
2 the top choice for African-American voters?

3 A Yes.

4 Q On the six occasions that the top-choice candidate
5 amongst white voters was slated by North County Labor, how
6 many times did that candidate win?

7 A All six times.

8 Q And on the one occasion that the top choice among African
9 Americans was slated by North County Labor, did that candidate
10 win?

11 A No. That candidate lost.

12 Q Now, let's talk again about the FFNEA endorsement. So
13 for those 14 seats that you already talked about or that were
14 up for election for the elections for which we have data,
15 FFNEA data from 2004 to 2015, how many candidates that Dr.
16 Rodden considers white preferred were slated?

17 A Eleven of the 14 white-preferred candidates received an
18 FFNEA endorsement.

19 Q And how many of those 11 white-preferred candidates
20 endorsed by FFNEA won their elections?

21 A All 11.

22 Q In the same period, how many minority-preferred
23 candidates -- again accepting Dr. Rodden's labeling -- were
24 endorsed by FFNEA?

25 A In those same elections, three of the 14

1 minority-preferred candidates were endorsed by the FFNEA.

2 Q And how many of those won election?

3 A One of those three endorsed candidates won election to
4 the board.

5 Q Okay. And now let's think about the top-choice candidate
6 amongst white voters in those six elections. How many of them
7 were endorsed by the FFNEA?

8 A The top choice among white voters was endorsed in all six
9 of those elections.

10 Q And how many were elected?

11 A And all six were elected.

12 Q And during the same time period, how many top choices
13 amongst African Americans were endorsed by the FFNEA?

14 A None of the top-choice candidates among African-American
15 voters were endorsed by the FFNEA in those six elections.

16 Q So what conclusion do you draw from this data, in your
17 expertise?

18 A That white candidates and white-preferred candidates were
19 usually endorsed by labor organizations, white candidates and
20 white-preferred candidates who received those endorsements
21 usually won, and minority candidates and minority-preferred
22 candidates were usually not endorsed by either of those
23 organizations.

24 Q Okay. And the white candidates and white-preferred
25 candidates, you know, almost always win, correct?

1 A Uh-huh. Yes.

2 Q I'd like to turn to your opinions about the extent to
3 which African Americans bear the effects of discrimination in
4 a way that hinders their ability to participate effectively in
5 the political process. Were you able to form an opinion
6 whether African Americans in the Ferguson-Florissant School
7 District bear the effects of discrimination in a way that
8 makes them more likely than white residents to be deterred
9 from voting?

10 A Yes.

11 Q And what is your opinion?

12 A That because of the history of discrimination and
13 segregation, that African-American voters in the district are
14 more likely to be deterred from voting than white voters in
15 the district.

16 Q And are there any enduring racial disparities that make
17 that so?

18 A Yes. I mean, I think yesterday Dr. Gordon mentioned the
19 history of discrimination in housing with segregation
20 ordinances and zoning practices and restrictive covenants and
21 real estate practices that produced and perpetuated
22 segregation in housing, as one example, and also contributed
23 to racial disparities in income and wealth and educational
24 attainment as well.

25 Q Do disparities in income and wealth and educational

1 attainment -- do those affect the likelihood of voting?

2 A Yes. Homeownership, education, and income are all strong
3 predictors of voting and voting in local elections, and so if
4 African Americans have fewer of those things than white
5 voters, expect them to -- African-American voter turnout to be
6 lower than white turnout.

7 Q Are there any disparities in how residents experience the
8 criminal justice system based on their race?

9 A Yes.

10 Q And can you explain what those are?

11 A There's evidence of racial disparities in experiences
12 with law enforcement and local courts and traffic stops, for
13 example.

14 Q Okay. And these disparities that you're talking about,
15 in your opinion are they the result of discrimination?

16 A I think so. For example, the state compiles evidence on
17 traffic stops, and in Ferguson and Florissant, which are two
18 municipalities that make up a significant portion of the
19 school district, African Americans are more likely to be --
20 significantly more likely to be pulled over by law enforcement
21 than white drivers.

22 Q So how do these disparities in the areas of income,
23 housing, employment, education, criminal justice system -- how
24 do they relate to voting?

25 A They relate to vote -- I think we touched on this a

1 little bit before. They relate to voting in that factors like
2 homeownership and education and income are strong predictors
3 of voter turnout. Those factors provide resources that help
4 people overcome the cost side of the calculus of voting and
5 lead to voter turnout. So if there are racial disparities in
6 those factors, they can contribute to racial disparities in
7 political participation as well.

8 Q And don't worry about being a little repetitious. If
9 it's too repetitious -- you might repeat something once in a
10 while. If it's too much, someone will complain. But it might
11 overlap a little bit, okay?

12 A Uh-huh.

13 Q All right. So we've been talking about that calculus of
14 voting again. I know this might make you repeat a little bit,
15 but disparities in income, housing, employment, education,
16 criminal justice -- how does that fit into the calculus of
17 voting in those different elements you consider?

18 A Right. Well, so, for example, interaction with the
19 criminal justice system, particularly when there are racial
20 disparities, I think when there's -- it can -- there's
21 research indicating that this leads African Americans to be
22 less trusting of local government. And if they are less
23 trusting of local government, then they may see fewer benefits
24 of participating in local elections. So that then reduces the
25 benefit side of the voting calculus in local elections.

1 Q Let's talk about education. Were you done with --

2 A Sure. Criminal justice.

3 Q Can you talk about how education disparities fit in the
4 calculus of voting?

5 A Sure. Higher levels of education produce more -- tend to
6 produce more civic skills, more confidence, things that allow
7 people to overcome the cost side of the calculus of voting and
8 make them more likely to register and vote in elections.

9 Q What about in employment? How does that fit in the
10 calculus of voting?

11 A It's related to education, income, but being employed is
12 generally a better predictor of voting in local elections than
13 being unemployed. And being unemployed similarly contributes
14 to the resources and networks and connections with other
15 organizations that bring people -- get people involved in
16 local government and local elections.

17 Q How does homeownership fit into the calculus of voting?

18 A Homeownership is a strong predictor of voting in local
19 elections that people who -- homeowners are more likely to
20 vote in local elections than non-homeowners. So, again, this
21 is a history of racial discrimination in housing and
22 segregation contributes -- has contributed to lower
23 homeownership rates among African Americans as compared to
24 whites in the St. Louis region.

25 Q Are there any special features of the Ferguson-Florissant

1 School District that are -- that cause African Americans to be
2 more likely than whites to be deterred from voting because of
3 additional burdens?

4 A Well, I think the at-large feature and the off-cycle
5 scheduling of those elections combined with these
6 socioeconomic disparities are more likely to deter African
7 Americans from participating in local elections than white
8 voters.

9 Q Okay. And as far as the calculus of voting, those
10 disparities make the cost higher for African Americans and the
11 benefits lower; is that correct?

12 A Right. Yes.

13 Q Has there been racial segregation in housing in Missouri
14 in the St. Louis area?

15 A Yes.

16 Q Can you tell me what you mean by that?

17 A Housing segregation?

18 Q Let me ask you. Were you in the courtroom when Dr. Colin
19 Gordon testified?

20 A Yes.

21 Q And did you listen to his testimony?

22 A I did.

23 Q And is his -- is your understanding of racial segregation
24 and housing patterns in St. Louis in the past and present the
25 same as his?

1 A Yes.

2 Q How does the St. Louis area compare to other metropolitan
3 areas in terms of segregation?

4 A Segregation in the St. Louis area tends to be more
5 pronounced than in other metro areas in the United States.

6 Q Has there been racial segregation in education in
7 Missouri or in the St. Louis area?

8 A Yes. I think Dr. Gordon touched on that.

9 MS. ORMSBY: I'm going to object, Your Honor. This
10 is not included anywhere in his report, this opinion.

11 THE COURT: Where are we going with it?

12 MR. ROTHERT: I believe it's part of the basis for
13 his opinion, and it comes directly from his report.

14 THE COURT: If you can tie it up, that's fine.

15 MR. ROTHERT: If I can have just a moment.

16 THE COURT: Sure.

17 Q (BY MR. ROTHERT) Dr. Kimball, could you look at page 48.
18 Look at Plaintiffs' Exhibit -- page 10 of Plaintiffs' Exhibit
19 48, please.

20 A Okay.

21 Q In that top paragraph there, can you tell me what that
22 paragraph is about?

23 A School segregation in Missouri and in St. Louis city and
24 county.

25 Q Okay. So has there been racial segregation in education

1 in Missouri and in the St. Louis area?

2 A Yes.

3 Q And how so?

4 A I think Dr. Gordon went into this in more detail than me
5 yesterday, but the Missouri constitution sanctioned school
6 segregation many years ago. The federal courts, after the
7 *Brown v. Board* decision, worked to desegregate public schools
8 in St. Louis County in the 1970s and 1980s. As part of that
9 effort, the Ferguson-Florissant School District expanded to
10 include Berkeley and Kinloch as well.

11 Q So has the segregation in housing and education had any
12 effect on educational attainment and personal income in St.
13 Louis County for African Americans?

14 A Yes. It's contributed to the racial disparity and
15 educational attainment and income and wealth.

16 Q Okay. And those disparities in personal income and
17 educational attainment are substantially higher for whites
18 than African Americans in St. Louis County?

19 A Yes.

20 Q And that's true today?

21 A Yes.

22 Q Have the income disparities between white and black
23 residents of St. Louis County changed over time?

24 A I think over the last ten to fifteen years they have
25 actually gotten more pronounced.

1 Q And by "more pronounced," the disparities are bigger?

2 A Larger. Sorry.

3 Q Yeah. Are there any other areas in which the St. Louis
4 region generates substantial racial disparities that are above
5 average for metropolitan areas in the United States?

6 A Unemployment, poverty, and infant mortality are others
7 that I know of.

8 Q You alluded to this earlier, but are there racial
9 disparities in the experiences with law enforcement and local
10 courts in the St. Louis region?

11 A Yes.

12 Q How so?

13 A Well, I mentioned the traffic stops.

14 Q Tell me about that.

15 A This is annual data that the Missouri Attorney General
16 compiles for our municipalities in Missouri. The latest data
17 that I looked at for this report indicated that in both
18 Florissant and Ferguson African-American drivers are more
19 likely to be pulled over than white drivers.

20 Q And using that Attorney General's data from 2013, were
21 you able to calculate how much higher the incidents of traffic
22 stops in Ferguson are for African Americans compared to
23 whites?

24 A Yes.

25 Q And how much higher?

1 A So this is in 2013, in Florissant.

2 Q Ferguson I was asking.

3 A Oh, Ferguson. African Americans were roughly 3.6 times
4 more likely to be pulled over than whites.

5 Q So that means that -- well, we can figure out what it
6 means. So using that same data, Attorney General's data from
7 2013, were you able to calculate how much higher the incidents
8 of traffic stops are in Florissant, city of Florissant, for
9 African Americans as compared to whites?

10 A Yes. In 2013 the rate of traffic stops for African
11 Americans was about seven and a half times higher than for
12 whites.

13 Q Is there any other data showing disparities on treatment
14 by law enforcement in Ferguson and Florissant?

15 A The same Attorneys General report also found higher
16 search and arrest rates for African Americans than for whites
17 in both Ferguson and Florissant despite the fact that the
18 proportion of those searches that yielded illegal substances
19 was actually higher for whites than for blacks in both
20 municipalities.

21 Q So black people are more likely to be searched in
22 Ferguson or Florissant by the police but less likely to have
23 something on them when they're searched. Is that --

24 A Correct.

25 Q And that's true in both those municipalities?

1 A Yes.

2 Q Are you aware of any information suggesting that the
3 police department in the Ferguson-Florissant -- any police
4 department in the Ferguson-Florissant School District engages
5 in unconstitutional police practices?

6 A Yes. The Department of Justice report on the Ferguson
7 Police Department last year reported on those violations.

8 Q And could you look at Plaintiffs' Exhibit 120.

9 A Okay.

10 Q What is that?

11 A That's the Department of Justice report on the Ferguson
12 Police Department.

13 Q Does that report make any findings about Ferguson's
14 municipal court practices?

15 A Yes. I think the report found the Ferguson municipal
16 court practices to be abusive.

17 Q And how so?

18 A That I think the report concluded that Ferguson relied
19 heavily on traffic fines and municipal court fees as a source
20 of municipal revenues. I think maybe a quarter of the
21 municipal revenues were from those sources, which, the report
22 concluded, was onerous.

23 Q Does the report make any findings about whether the
24 practices it points out by the police and by the courts harm
25 African Americans who are in Ferguson or pass through

1 Ferguson?

2 A Yes. The report found that law enforcement and municipal
3 court practices in Ferguson disproportionately harmed
4 African-American residents and lowered their trust in local
5 government as a result.

6 Q Does increased contact with the criminal justice system
7 have any effect on voting?

8 A Yes. It tends to lower voting participation.

9 Q In particular, do neighborhoods with increased contact
10 with the criminal justice system have lower voter turnout
11 rates?

12 A Yes. There's political science evidence that
13 neighborhoods with higher levels of contact with the criminal
14 justice system tend to have lower levels of voter
15 participation.

16 Q And is -- why? Why is that so?

17 A I think a number of reasons. One, contact with the
18 criminal justice system means a loss of economic resources.
19 And as I described before, having fewer economic resources
20 means you're less likely to overcome the cost side of that
21 calculus of voting.

22 Contact with the criminal justice system tends to
23 foster more negative attitudes and less trust of local
24 government, which lowers the benefit side of the cost of
25 voting calculation and makes those distrustful individuals

1 less likely to see the benefit of voting in local elections.

2 Those who have contact with the criminal justice
3 system may have, I think, more difficulty engaging in joining
4 in social -- local organizations and social networks that help
5 bring people into local government and local community affairs
6 as well.

7 Q By the way, does this Department of Justice report --
8 does it discuss mistreatment of African-American students by
9 the police within schools that are in the Ferguson-Florissant
10 School District?

11 A Yes. I think there were -- the report mentions a couple
12 incidents of Ferguson police officers who were school resource
13 officers at schools in the Ferguson-Florissant School District
14 and some incidents where they engaged in excessive force or
15 charged students with criminal offenses for what seemed like
16 routine disciplinary incidents.

17 MR. ROTHERT: Okay. Your Honor, we move for
18 admission of Plaintiffs' Exhibit 120.

19 MS. ORMSBY: Your Honor, I object as to relevance.
20 This report and, in fact, this line of questioning has to do
21 with the City of Ferguson. If this was a case about how the
22 City of Ferguson conducts their elections, I would agree it
23 would be relevant, but in this case it's about how the school
24 district conducts elections, and I don't believe this line of
25 questioning or this exhibit is relevant.

1 THE COURT: There's no proper foundation been laid
2 for the report. We all know what it says. He used it. He
3 referenced it as an expert in the area, but I'm not going to
4 receive it as substantive evidence because he's not qualified
5 or capable of producing it as substantive evidence. But he
6 can use it because he relied on it to reach his opinions.

7 MR. ROTHERT: The only objection that's been raised
8 to this is relevance in the objections to exhibits and --

9 THE COURT: Well, there's no foundation for it other
10 than he relied on it for the purpose of reaching his opinion.

11 MR. ROTHERT: I believe they stipulated to its
12 authenticity.

13 THE COURT: Did you do that?

14 MS. ORMSBY: Your Honor, we objected as to it being
15 irrelevant as it pertains to the school district and its
16 election, and we did not stipulate to this exhibit. And I
17 would add my objection as to foundation.

18 THE COURT: I mean, I have no trouble with him
19 testifying about it, and you can cross-examine him about it
20 because, obviously, the city of Ferguson is within the school
21 district, and the conduct of the Ferguson Police Department in
22 and outside the schools, to the extent it evidences
23 discrimination and those practices which contribute to his
24 opinion, are all relevant. But for me to actually receive the
25 exhibit as evidence is different than permitting him to

1 testify about it and use it.

2 MR. ROTHERT: I understand.

3 THE COURT: I don't have any basis to receive it as
4 evidence other than you telling me it is what it is.

5 MR. ROTHERT: Well, can I try one more time?

6 THE COURT: Sure.

7 MR. ROTHERT: In ECF Document 147, which is the joint
8 stipulations as to exhibits, Exhibit 120 is one of the
9 exhibits to which the parties stipulate to that the exhibits
10 are authentic but subject to the district's relevance
11 objection.

12 MS. ORMSBY: I stand corrected, Your Honor. That's
13 true.

14 MR. ROTHERT: So they have stipulated to the
15 authenticity of it.

16 THE COURT: I'll receive it. Just trying to do the
17 right thing. You understand.

18 Q (BY MR. ROTHERT) I appreciate that, Your Honor.

19 How does the -- I'm sorry. I think I'm going to
20 repeat myself here if I'm not careful. Based on these points
21 about the disparities in areas in the Ferguson-Florissant
22 School District, do you have an opinion about whether in the
23 communities of the Ferguson-Florissant School District there
24 are substantial and enduring racial disparities that make
25 African Americans in the Ferguson-Florissant School District

1 more likely than whites to be deterred from voting in a
2 Ferguson School Board election?

3 A Yes.

4 Q And what is your opinion?

5 A That the substantial -- that my opinion is that there are
6 substantial and enduring racial disparities in areas such as
7 income and employment and education and criminal justice, and
8 many of these factors, as I described earlier, are strongly
9 related to the likelihood of voting, particularly in local
10 elections. And so since African Americans in the
11 Ferguson-Florissant School District bear the effects of
12 discrimination in these areas, they're more likely than whites
13 to be deterred from voting by the election procedures used in
14 the Ferguson-Florissant School District.

15 Q When you're saying more likely to be deterred by the
16 election procedures, you're talking about at large and
17 off cycle primarily?

18 A Yes.

19 Q Okay. The next topic I'd like to talk to you --

20 THE COURT: How long is your next topic?

21 MR. ROTHERT: I think there are two more topics; so
22 20 minutes, 25 minutes.

23 THE COURT: We will take our afternoon recess. It's
24 3:20 now. We will reconvene at 3:50.

25 MR. ROTHERT: Thank you.

1 THE COURT: Thank you.

2 (COURT RECESSED FROM 3:20 PM UNTIL 3:55 PM.)

3 THE COURT: Are you ready?

4 MS. ORMSBY: Yes, Your Honor.

5 THE COURT: I'll remind you, sir, you're still under
6 oath.

7 You may proceed.

8 Q (BY MR. ROTHERT) Dr. Kimball, just before the break we
9 were getting ready to talk about the extent to which members
10 of a minority group have been elected to public office in the
11 jurisdiction, the jurisdiction here being the
12 Ferguson-Florissant School District, and the effect that has
13 on voter participation.

14 So I know you've alluded to this earlier in your
15 testimony, but have you had an opportunity to examine the
16 election results for the Ferguson-Florissant School Board
17 elections from 2000 through and including last year, 2015?

18 A Yes.

19 Q In your initial report you looked at the
20 Ferguson-Florissant School District School Board elections
21 beginning in 2004 but did not look at 2000, 2001 through 2003.
22 Why did you begin your examination with the 2004 election?

23 A I started with 2004 because that roughly ten-year period
24 allows for approximately three chances for the board to turn
25 over, and more recent elections are more probative in Voting

1 Rights cases.

2 Q In the eight elections that you examined from 2004 to
3 2015 for your initial report, how many white candidates ran
4 for Ferguson-Florissant School Board?

5 A That was eight elections. Twenty-three white candidates
6 ran for the school board.

7 Q And how many won?

8 A Sixteen of the white candidates won.

9 Q So with 16 of 23 candidates, white candidates, winning,
10 what was the success rate for white candidates in elections
11 for Ferguson-Florissant School Board between 2004 and 2015?

12 A Sixteen out of 23 is about 70 percent, if we round it
13 off.

14 Q Okay. Compared to the 23 white candidates who ran in
15 those elections, how many African-American candidates were in
16 those same eight elections from 2004 to 2015?

17 A Nineteen African-American candidates ran in those eight
18 elections.

19 Q And how many won?

20 A Two.

21 Q So what's the success rate for African-American
22 candidates for Ferguson-Florissant School District School
23 Board between 2004 and 2015?

24 A Two out of 19 is 10 and a half percent.

25 Q Have you formed an opinion about whether white candidates

1 have had more success winning seats on the Ferguson-Florissant
2 School District School Board as compared to African-American
3 candidates?

4 A Yes.

5 Q And what is your opinion?

6 A That white candidates have had greater success getting
7 elected to the board in those elections than African-American
8 candidates.

9 Q Is this question a close call?

10 A No. Seventy percent is quite a lot higher than 10 and a
11 half percent.

12 Q What is bullet voting?

13 A That's if a candidate, if a voter -- in these elections
14 voters have either two or three votes to cast. Bullet voting
15 would be casting just one vote for a single candidate and not
16 using the remaining votes on any other candidates.

17 Q Couldn't African Americans just bullet vote for one
18 African-American candidate and increase the likelihood of
19 electing one African-American candidate?

20 A I think that's been suggested as one strategy for trying
21 to elect an African-American board member under the at-large
22 system.

23 Q Would that work?

24 A It could work. It would take a lot of efforts, a lot of
25 coordination. There's nothing to prevent white voters from

1 engaging in bullet voting to negate the effect of
2 African-American voters engaging in bullet voting.

3 Q Is this a satisfactory way of achieving the election of
4 an African-American candidate for you?

5 A No. I don't think it's a very satisfactory long-term
6 solution. Bullet voting -- you're asking voters to give up
7 some of their franchise so that they might elect one candidate
8 that they prefer. If they prefer additional candidates,
9 they're giving up the chance to support those other
10 candidates.

11 Q And in considering the costs of voting, would that be
12 a -- would giving up part of your franchise be a cost of
13 voting?

14 A It would factor into the calculus of voting, I suppose,
15 in that if you're only supporting one candidate and not using
16 your full franchise, you're not seeing the full benefits of
17 voting, particularly if there are other candidates that you
18 also like. The coordination part of it, of coordinating lots
19 of voters, educating them to, okay, only vote for this one
20 candidate, don't vote for anyone else, takes a lot of effort,
21 a lot of resources; so it would make the election process more
22 costly.

23 Q I know this factors about the extent to which members of
24 a minority group have been elected to public office, but have
25 you considered Dr. Rodden's definitions of minority-preferred

1 candidate and white-preferred candidate? And just assuming
2 for a minute that those definitions are sound, have you been
3 able to ascertain the relative success for minority-preferred
4 and white-preferred candidates?

5 A Yes.

6 Q All right. And have you been able to ascertain the
7 relative success rate of the top choice of whites' candidate
8 and the top choice candidate of minorities?

9 A Yes. Yes. I think that was in my rebuttal report.

10 Q If you could look at Plaintiffs' Exhibit 49, that's your
11 rebuttal report, correct?

12 A Yes.

13 Q And could you look at page 2, Table 1?

14 A Yes.

15 Q What does this table show?

16 A It shows for elections to the Ferguson-Florissant School
17 Board the success rates of minority-preferred and
18 white-preferred candidates as well as the success rates of
19 top-choice candidates for minority voters and the top-choice
20 candidates for white voters.

21 Q All right. And, now, in the first section there, you
22 have 2003, the period from 2003 to 2000 -- I'm sorry. On the
23 first line, you have the period from 2000 to 2003, the second
24 line you have the period from 2004 to 2015, and then the third
25 line you combine them. Why did you separate them?

1 A The 2004 to 2015 elections were the ones that I initially
2 only examined in my original report, and Dr. Rodden's report
3 went back to 2000; so I included that earlier period as well.

4 Q So let's first look at the preferred candidates based on
5 the success rate of African-American-preferred candidates as
6 defined by Dr. Rodden's calculations and definitions.

7 So assuming those are valid based on how he assigned
8 those labels of minority preferred and white preferred, does
9 that change your opinion that white candidates have had more
10 success in winning seats on the Ferguson-Florissant School
11 District than African-American candidates?

12 A No. It doesn't change my opinion.

13 Q Why not?

14 A Because whether you look at white-preferred versus
15 minority-preferred candidates or the top choice of white
16 voters versus the top choice of minority voters, in either
17 case the candidates preferred by white voters had a
18 substantially higher success rate than candidates preferred by
19 African-American voters.

20 Q Very well. When Dr. Rodden was talking about minority
21 top -- I'm sorry -- minority-preferred and white-preferred
22 candidates, were there any problems in the way that he
23 identified second in choice, second- and third-choice
24 preferred candidates?

25 A In some elections the ecological inference estimates also

1 contain a confidence interval, and in some elections multiple
2 candidates had similar enough estimates for either
3 African-American support or white support that it was not very
4 clear which candidate really was the second-choice or
5 third-choice candidate in some elections.

6 Q Are there any specific examples of that, that you recall?

7 A I think in 2015, for example, there are a number of
8 candidates that could have -- that were close to being the
9 second choice for African-American voters. In 2002 there were
10 number of candidates that were pretty close to their voter
11 support among African-American voters and could have been the
12 third choice. Those are a couple of examples.

13 Q Do African-American candidates -- in your opinion, do
14 they lose so frequently because they are weaker candidates?

15 A I don't think so.

16 Q Okay. Why don't you think so?

17 A Well, in local elections incumbents usually win
18 reelection because incumbents are usually better known among
19 voters. In the case of the school district, informational
20 materials get sent to all voters that have the names of the
21 current school board members on them; so there's some name
22 recognition advantage there.

23 Q Does incumbency help African-American candidates in the
24 Ferguson-Florissant School District?

25 A No. It doesn't appear to.

1 Q Okay. Do you know how often white incumbents have -- in
2 the last 12 cases how many times white incumbents have won
3 reelection in the Ferguson-Florissant School District?

4 A Nine out of the 12 white incumbents in the elections I
5 examined won reelections. So that's 75 percent.

6 Q And how many elections have there been when
7 African-American incumbents have won in that same time?

8 A There were three African-American incumbents who ran for
9 reelection.

10 Q And how many of those incumbents won?

11 A None of them won.

12 Q Okay. So what percentage is that?

13 A Zero.

14 Q So do you think that is -- is that a significant
15 difference between the success rate of white incumbents and
16 African-American incumbents?

17 A Yes. It's a pretty big difference.

18 Q How does the relative lack of success of African
19 Americans as candidates for the Ferguson-Florissant School
20 Board -- how does that fit into the calculus of voting for an
21 African-American voter?

22 A Well, we know that African-American voters tend to prefer
23 African-American candidates particularly as their top choice
24 in these elections. If they -- if African-American voters are
25 seeing that their preferred candidates are usually losing,

1 they may see fewer benefits of participating in local
2 elections, which may then lead them to not vote in future
3 local elections.

4 Q Finally, I'd like to talk to you a little bit about
5 racially polarized voting in Ferguson-Florissant School
6 District elections. As a very -- I guess we haven't talked
7 about this yet. So just very basically, what is racially
8 polarized voting? What does that mean to you, as a political
9 scientist?

10 A Basically that white voters support different candidates
11 than African-American voters or other racial minority voters.

12 Q And what methods can be -- well, do you have an
13 opinion -- were you able to form an opinion whether or not
14 there's racially polarized voting in the Ferguson-Florissant
15 School District School Board elections?

16 A Yes.

17 Q What is your opinion?

18 A That there is racially polarized voting in the
19 Ferguson-Florissant School District elections.

20 Q So what methods can be used to determine if there's
21 racially polarized voting in a jurisdiction?

22 A The same -- some of -- the same three methods I mentioned
23 before with turnout, ecological regression, homogeneous
24 precincts analysis, and ecological inference. The same
25 challenges apply. We're trying to estimate individual-level

1 behavior, particularly for different racial groups using
2 aggregate-level data.

3 Q And for homogeneous precinct analysis, how do you
4 determine whether or not a precinct is homogeneous or not?

5 A I'm not aware of sort of a set cutoff, but typically it's
6 somewhere above 80 percent or above 90 percent of that group
7 as a percentage of the voting-age population.

8 Q Now, are you aware that in this case there's another
9 expert, Dr. Engstrom, who for some things uses a different
10 cutoff for you -- than you?

11 A Right. I think he looked at 85 percent, as I recall.

12 Q Is that significant that the two of you used a different
13 cutoff; do you think?

14 A No. I mean, I think the more extreme the cutoff, that
15 is, the higher you get toward 100, you might get slightly --
16 or at least in this case it seemed like you get slightly
17 larger differences between support of white voters versus the
18 candidate support by African-American voters.

19 Q That homogeneous precinct analysis that you did in this
20 case, does it suggest that there's racially polarized voting
21 in the Ferguson-Florissant School District?

22 A Yes, I think so. I think you're referring to my rebuttal
23 report. Yes. Yes.

24 Q And your ecological regression estimates analysis -- does
25 that suggest whether there's racially polarized voting in the

1 Ferguson-Florissant School District elections?

2 A That was from my original report of examining the 2014
3 election, yes. I concluded there was evidence of racially
4 polarized voting.

5 Q And you've looked at the ecological inference estimates
6 as well -- is that true? -- in your rebuttal report?

7 A Yes. In my rebuttal report, the ecological inference
8 estimates from Dr. Rodden's report.

9 Q And based on the ecological inference estimates from Dr.
10 Rodden's report, do those show racially polarized voting in
11 the Ferguson-Florissant School District?

12 A I think they do, yes.

13 Q And how is it beneficial to consider data using all three
14 of those different methods instead of one or --

15 A Sure. I think as I mentioned before, each of those
16 methods is trying to estimate individual-level behavior based
17 on aggregate data from precincts. None of them is guaranteed
18 to give us the correct answer.

19 I think there's political science research indicating
20 that ecological inference tends to be better than ecological
21 regression for the reasons I mentioned earlier. There is a
22 recent article in *Election Law Journal* that examines racially
23 polarized voting in particular and found that ecological
24 inference tends to have smaller errors than ecological
25 regression.

1 But they are still -- our chances for errors --
2 they're still making estimates. So I think it's useful to
3 supplement the ecological inference with the homogeneous
4 precincts analysis.

5 Q And in this case in your analysis and your opinion, does
6 looking at data with the three different methods -- does that
7 confirm your opinion, or does it provide contradictory
8 evidence?

9 A I think all three methods for me point to the same
10 conclusion that there's racially polarized voting in the
11 Ferguson-Florissant School District.

12 Q All right. I'd like you to look -- you can look at
13 Plaintiffs' Exhibit 48, page 4, Figure 1, but it will be on
14 the screen too. It might be easier and bigger there.

15 This is a handsome figure. Did you create this?

16 A Yes. This is in my original report.

17 Q Okay. Can you explain -- well, first of all, before you
18 tell me what everything means on it, does this show -- this is
19 the analyzed data from what election?

20 A The 2014 election.

21 Q For Ferguson-Florissant School District?

22 A Yes.

23 Q And can you explain to me what Figure 1 shows?

24 A Figure 1 plots election results from each precinct in the
25 school district in the 2014 election. The horizontal axis is

1 the African-American share of the voting-age population in
2 each precinct. So each circle in the graph is a different
3 precinct. The size of the circles vary because they're sized
4 in proportion to the number of voters, the number of ballots
5 cast in each precinct. So bigger circles mean there were more
6 voters in that precinct.

7 The vertical axis is the share of the vote that the
8 three "Vote for a Change" candidates -- there were three
9 African-American candidates that sort of ran together under
10 the banner "Vote for a Change." I just -- I think I called it
11 "coalition" for short. So the vertical axis is the share of
12 the vote for those three candidates.

13 And each precinct in the graph shows pretty strong
14 relationship between race and voter support for those three
15 candidates, that in the --

16 Q Well, let me ask you. That line down the middle?

17 A Yeah.

18 Q Did you do that with a ruler yourself, or how did that
19 come about?

20 A The computer program added that. That's the regression
21 line. So that's the ecological regression line, the line that
22 best fits the circles on that graph.

23 Q And what's that line meant to show?

24 A It's basically indicating that -- the relationship
25 between race and support for those three candidates in that

1 election, indicating that in precincts where there was a
2 higher African-American share of the voting-age population
3 were also the precincts where those three African-American
4 candidates running together got the highest share of the vote
5 and in the precincts with the lowest African-American share of
6 voting-age population were the same precincts where those
7 three African-American candidates got the lowest share of the
8 vote.

9 Q And does this show a strong relationship between race and
10 the candidates selected?

11 A Yes.

12 Q If there was not -- so there's a pretty steep slope, you
13 would agree, of the line?

14 A Yes. The line slopes upward, indicating that as the
15 racial -- as the African-American share of the population in
16 the precinct increases, so does the vote share for those three
17 candidates.

18 Q Now, if there were no racial polarization, what would
19 that line look like?

20 A Then it would look like a horizontal flat line going
21 across, from left to the right, across the screen.

22 Q Now, please take a look at Table 2 on page 5 of Exhibit
23 49, which is your rebuttal report.

24 THE COURT: So did they have to vote for all three to
25 chart?

1 THE WITNESS: The graph before -- so I just --

2 THE COURT: Do you follow me? Because you've got --

3 THE WITNESS: Yeah.

4 THE COURT: To be honest -- and I don't mean to
5 interrupt -- you have a number of under -- if racial
6 polarization is in play, you have a number of underperforming
7 precincts in there. Like if you look at 40 percent or above,
8 between 40 and 60, few of those or the voting-age population
9 of African Americans don't reach 60 percent of the vote. Do
10 you follow me?

11 THE WITNESS: Uh-huh. Uh-huh.

12 THE COURT: So if it's a direct correlation, they're
13 underperforming.

14 THE WITNESS: Slightly underperforming --

15 THE COURT: You're getting a fewer percentage of the
16 vote given the percentage of African-American voters.

17 THE WITNESS: Slightly, yeah. Yeah.

18 THE COURT: I mean almost uniformly.

19 THE WITNESS: Yeah. So --

20 THE COURT: So with even some real outliers at almost
21 80 percent, not even barely getting 40 percent.

22 THE WITNESS: Yeah. So the regression -- the
23 regression -- where the regression line hits zero on --

24 THE COURT: So my question was did they have to vote
25 for all three of the slate, if you will, for this to register,

1 or is this just total number of votes cast for
2 African-American candidates?

3 THE WITNESS: This is votes cast for those three
4 candidates divided by votes cast for everyone is the measure
5 of voters.

6 THE COURT: But you agree with me they're
7 underperforming almost -- except at the very top.

8 THE WITNESS: Yeah. It's not perfect --

9 THE COURT: Even at the bottom they're overperforming
10 at the very top, but then between they're underperforming for
11 some reason.

12 THE WITNESS: Yeah. It's a strong relationship but
13 not a perfect relationship.

14 THE COURT: Right.

15 THE WITNESS: I think based on this I estimated that
16 maybe 70, 75 percent of African Americans voted for these
17 three candidates and maybe 15 to 20 percent white --

18 THE COURT: It seems about right given the way your
19 regression is.

20 THE WITNESS: Yeah. Yeah.

21 THE COURT: Okay.

22 Q (BY MR. ROTHERT) And you estimated about 75 percent of
23 African Americans voted for the African-American candidates,
24 and about what percentage of whites is your estimate?

25 A I think 15 to 20.

1 Q Is that --

2 THE COURT: Which would be consistent with the
3 bottom, because at almost zero you're still performing close
4 to 20.

5 THE WITNESS: Yeah.

6 Q (BY MR. ROTHERT) In your opinion as a political scientist,
7 is that racially polarized?

8 A Yes, because there's a big difference between who the
9 African-American voters supported and who white voters -- and
10 white voter support for those candidates.

11 Q Now let's look at Table 2 on Exhibit 49. Can you tell me
12 what this table shows?

13 A This is a homogeneous precinct analysis of voting in the
14 last five Ferguson-Florissant School Board elections,
15 particularly comparing the candidate that was the top choice
16 of African-American voters versus the candidate that was the
17 top choice of white voters based on the estimates in Dr.
18 Rodden's report.

19 Q And in each of these elections, was the -- are these all
20 elections in which the top choice of African-American voters
21 was an African-American candidate?

22 A Yes.

23 Q And, of course, the top choice of white voters was a
24 white candidate?

25 A In each of these five elections, yes.

1 Q All right. And so what did these results of the HP
2 analysis tell you about whether there is racially polarized
3 voting in those five elections?

4 A They show evidence of racially polarized voting in each
5 of the five elections.

6 Q Let's take the 2015 election, for instance. So what
7 percentage of the votes in the homogeneous African-American
8 precincts, the heavily African-American precincts, voted for
9 the top-choice African-American candidate?

10 A In the heavily African-American precincts, 70 percent of
11 the voters chose the top choice of African-American voters.

12 Q And what percentage in the heavily white precincts chose
13 that top-choice African-American candidate?

14 A Thirty-three percent. And I guess I should be clear here
15 that I'm measuring voter support here as the votes for that
16 candidate divided by total ballots cast, which is a little bit
17 different than the Engstrom and Rodden reports.

18 Q Okay. Explain how it's different.

19 A The Engstrom and Rodden reports computed voter support as
20 the percentage of total votes cast; so votes for a particular
21 candidate divided by total votes for all candidate -- given to
22 all candidates. And since these are multi-seat elections and
23 each election voters had either two or three votes to give, so
24 measuring voter support as a percentage of votes cast tends to
25 produce smaller percentages.

1 The Engstrom report makes this point pretty nicely.
2 If you have a two-seat election, for example, and every voter
3 has two votes to give and every voter indeed casts both votes,
4 then the maximum support any candidate could get is 50
5 percent. There's sort of an approximate 50-percent ceiling on
6 voter support when you measure it as a percentage of votes
7 cast, not 100 percent.

8 I think it may be harder for some -- harder to make
9 sense of those percentage of votes cast figures, I think
10 particularly in examining racially polarized voting. To me,
11 the more intuitive measure of voter support is how many white
12 voters supported a candidate X and how many African-American
13 voters supported candidate X. So that's why I, like in this
14 table, measured voter support as the share of voters who voted
15 for who a particular -- who selected a particular candidate.

16 Q And in your analysis of -- your HP analysis of these five
17 elections, has racial polarization been greater or less in the
18 last two elections than it had been in the rest of those five?

19 A Yeah. Racial polarization is larger in the two most
20 recent elections than in the prior elections. The -- either
21 comparing a candidate's vote share in African American --
22 heavily African-American precincts versus heavily white
23 precincts, the differences are greater in 2014, 2015 than in
24 the three prior elections. Or if you compare that, say, the
25 top choice of African-American voters versus the voter support

1 for the top choice of white voters within heavily African
2 American or heavily white precincts, the differences are
3 greater in the 2014 and 2015 than in the three prior
4 elections.

5 Q And do all three ways of analyzing this homogeneous
6 precinct analysis, ecological regression analysis, and
7 ecological inference analysis -- do they all confirm the
8 racial polarization that you believe there is?

9 A Yes. I think all three methods provide evidence of
10 racial polarization in the Ferguson-Florissant School Board
11 elections.

12 Q And you've reviewed Dr. Rodden's report, correct?

13 A Yes.

14 Q Does he properly characterize the racially -- racial
15 polarization in voting in Ferguson-Florissant School District?

16 A I think in the text, in the analysis of his estimates, I
17 think he tends to understate the degree of racial
18 polarization.

19 Q Can you say what you mean by "in the text"?

20 A Well, there's a section of his report where he examines
21 the success or he discusses the success rate of
22 minority-preferred candidates, but he doesn't compare that to
23 the success rate of white-preferred candidates to see how
24 similar or different they are. And I think that's sort of an
25 essential comparison that needs to be made for -- to examine

1 racially polarized voting.

2 I think computing voter support as percentage of
3 total votes cast, as I mentioned earlier, can -- since you're
4 going to get smaller percentages or there's sort of a lower
5 ceiling on what that voter support measure can be, you tend to
6 get numbers that look more similar. And so I think -- that's
7 in my rebuttal report. That's why I computed the voter
8 support as percentage of ballots cast. I think that makes it
9 clear to know how much support are white -- what percentage of
10 white voters are supporting a particular candidate and what
11 percentage of black voters are supporting a particular
12 candidate.

13 Q Let me give you -- can you look at Plaintiffs' Exhibit
14 56? Dr. Rodden's report, correct?

15 A Yes.

16 Q Could you turn to page 29? And look at paragraph 55. Do
17 you see there where it says about the 2013 election?

18 A Yes.

19 Q Do you see where it says "It is important to note that
20 Mr. Henson received" -- I'm sorry. I screwed it up. "It is
21 important to note that Mr. Henson only received a majority of
22 the votes cast in two of the 47 precincts. In fact, in
23 precincts where more than 80 percent of the voting-age
24 population was African American, Henson only received 39
25 percent of the votes cast." Did I read that correctly?

1 A Yes.

2 Q All right. Is that a fair characterization of the data?

3 A Well, I think it's an incomplete characterization.

4 Q Could you explain what you mean?

5 A Well, so as I described before, in a two-vote election,
6 assuming everyone cast both votes, 50 percent is the maximum a
7 candidate can hope to get. We know not all voters do that.
8 If there's some voters who engage in bullet voting, then you
9 can get instances above 50 percent. So I think the two
10 precincts where Mr. Henson did get a majority is evidence that
11 there was some bullet voting in those two precincts.

12 Q It's also evidence that he got most of the votes -- a
13 vote on most of the ballots on those precincts as well?

14 A Yeah, that the vast majority of voters selected him in
15 those two precincts, yeah, yeah. The 39 percent of votes cast
16 that he received in the precincts where more than --

17 COURT REPORTER: Whoa.

18 A I'm sorry. Slower.

19 THE COURT: When you read, it's --

20 A Sorry about that. The second sentence about that Henson
21 received only 39 percent of the votes cast in the precincts
22 with more than -- where more than 80 percent of the voting-age
23 population was African American, I think keeping in mind that
24 sort of approximate 50 percent ceiling makes that 30 percent
25 number look pretty good. It's closer to 50 than it is to

1 zero.

2 In my rebuttal report, I looked at the same set of
3 precincts with more than 80 percent -- where more than 80
4 percent of the voting-age population was African American, and
5 in those precincts a majority of the voters selected Henson on
6 their ballots.

7 Q So if he received -- only received 39 percent of the
8 votes cast as is characterized here, and assuming -- I mean,
9 we don't know this, but assuming that every voter cast the two
10 votes they had available, that would mean that he got 78
11 percent -- 78 percent of the voters supported him in that
12 precinct?

13 A Right, as an estimate, assuming everybody cast both their
14 votes.

15 THE COURT: Do you need to guess? I mean, could you
16 know by precinct how many ballots were cast and how many votes
17 were made, thereby determining how many people only voted once
18 as opposed to twice?

19 THE WITNESS: That we'd have to ask --

20 THE COURT: That data? I mean, you would know how
21 many people voted.

22 THE WITNESS: We know how many ballots were cast.

23 THE COURT: And you would know how many votes were
24 cast.

25 THE WITNESS: For a particular candidate, yeah.

1 THE COURT: And from that you could extrapolate how
2 many people voted for one and how many people voted for two.
3 I mean, the election --

4 THE WITNESS: You could try and estimate --

5 THE COURT: The election board would know that.

6 Q (BY MR. ROTHERT) Well, did some people vote for zero in a
7 given --

8 A Some probably -- some may have skipped the school board
9 election on the contest on the ballot --

10 THE COURT: Depends what else was on the ballot?

11 THE WITNESS: Yeah. To answer your question, Your
12 Honor, I mean, ideally you'd want to look at the actual
13 ballots themselves and --

14 THE COURT: Well, we're not going to do that.

15 THE WITNESS: But we can't -- yeah. Yeah. I think I
16 would add to this -- so depending on how you measure voter
17 support, I think things can look a little different in the --
18 when I use my voter -- measure of voter support, that is,
19 votes for Henson divided by total ballots cast, I found 13
20 precincts where more than a majority of voters chose Henson,
21 and they were almost all in heavily African-American
22 precincts.

23 Q (BY MR. ROTHERT) So is this the kind of error -- does this
24 repeat throughout Exhibit 56?

25 A Yeah. I don't know that I'd call it an error. Maybe not

1 a complete description of what the results show.

2 Q And does this lack of a complete description of what the
3 results show, does it cause Dr. Rodden to give an inaccurate
4 picture of the racial polarization of the Ferguson-Florissant
5 School District voting?

6 MS. ORMSBY: I'm going to object as to leading.

7 THE COURT: Overruled.

8 A I think he tends to understate the degree of racial
9 polarization in the Ferguson-Florissant School District
10 elections.

11 Q So, ultimately, is racial polarization a -- about the
12 behavior of voters or the number of votes cast?

13 A Well, it's about the behavior of voters.

14 MR. ROTHERT: Could I have just one moment?

15 **(OFF THE RECORD.)**

16 MR. ROTHERT: I have no further questions for this
17 witness.

18 THE COURT: I assume your cross is going to be more
19 than thirty minutes.

20 MS. ORMSBY: It is, Your Honor.

21 THE COURT: But let's get started. What do you
22 think?

23 MS. ORMSBY: Okay.

24 THE COURT: Mr. Rothert, are you ready?

25 MR. ROTHERT: Yes.

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MS. ORMSBY:

4 Q Good afternoon, Dr. Kimball. Good to see you again. I'm
5 Cindy Ormsby.

6 A Hi.

7 Q I just want to touch on a couple of areas first. You
8 talked at the beginning of your testimony about voter
9 registration. I can't remember seeing anything in your report
10 about voter registration. Could you point it out to me,
11 please?

12 A About voter registration?

13 Q Yes.

14 A I know I was asked to look at that census support
15 comparing voter registration by race in the state of Missouri.

16 Q When were you asked to look at that information?

17 A Earlier today when I testified.

18 Q But did you look at it and include it into your report?

19 A I don't think I did.

20 MS. ORMSBY: Your Honor, I would like to object to
21 that line of questioning and ask that it be stricken.

22 THE COURT: Okay. We'll take that up at the
23 conclusion.

24 Q (BY MS. ORMSBY) I also didn't see anything in your report
25 about bullet voting. Can you point in your report where you

1 opined about bullet voting?

2 A I don't think I did.

3 MS. ORMSBY: Your Honor, I'd like you to strike that
4 as well.

5 THE COURT: I'll take that under advisement.

6 Q (BY MS. ORMSBY) Did you happen to look at voter
7 registration by race in the Ferguson-Florissant School
8 District?

9 A No, I did not.

10 Q Could you have done so?

11 A Probably could have, yes.

12 Q Because doesn't the Board of Elections put on their
13 website even and certify a column in the results for voter
14 registration?

15 A The number of registered voters, yes.

16 Q And you could have done either a homogeneous precinct or
17 a ecological inference analysis just like you did for turnout,
18 right?

19 A Uh-huh.

20 Q But you didn't do that?

21 A Correct.

22 Q You also testified about how even if African-American
23 voting-age population was a majority, it would have to be a
24 super majority of 70 percent plus -- is that what you said? --
25 in order for them to be successful in electing their

1 candidates?

2 A To --

3 Q It's a yes-or-no question.

4 A To control the at-large elections, yes.

5 Q And is that in your report anywhere?

6 A The 70 percent?

7 Q Anything about a super majority? Anything at all?

8 A No.

9 Q You talk about the largest group -- voting group -- being
10 able to elect their candidate of choice, don't you? In fact,
11 you cite specifically to an article that you considered.

12 A Which one was that?

13 Q Well, I will have you turn to -- well, Your Honor, I'd
14 also like you to consider striking any testimony as far as a
15 super majority. It's not referred to in his report.

16 THE COURT: I will take that with the rest.

17 Q Thank you, Your Honor. I'll come back to that subject
18 later on. I want to kind of take things in more order.

19 How many African-American ballots were -- how many
20 African-American candidates were on the ballot in 2014?

21 A I think there were five maybe.

22 Q And how many seats were up for election?

23 A Three.

24 Q And how many of those five African-American candidates
25 were running as a slate?

1 A Three.

2 Q In any of your analysis, did you take into account the
3 votes received by the other two African-American candidates?

4 A No. They were less viable candidates; so I focused on
5 the three that ran together.

6 Q Did you write a blog post in 2014, August 28 of 2014,
7 that you updated on September 9 of 2014?

8 A I think so, yes.

9 Q Your Honor, this is a stipulated exhibit for the
10 district, No. QQ.

11 Can we look at the first graph on the next page of
12 this blog. Now, this graph looks very similar to the graph
13 that was put up on the screen a few minutes ago, doesn't it?

14 A It's similar.

15 Q It's the same analysis as far as turnout in the 2014
16 election -- I mean as far as racial polarization in the 2014
17 election? I have them side by side so you can compare.

18 A Yeah, they look pretty similar.

19 Q And if you look right below your first graph in your
20 blog, you have a second graph; is that right?

21 A Yes.

22 Q What is that graph analyzing?

23 A That compares voter turnout measured as a percentage of
24 registered voters by the racial composition of the precincts
25 in that 2014.

1 Q So it analyzes voter turnout in that election, correct?

2 A Yeah.

3 Q What did you conclude about voter turnout in 2014 as it
4 compares African American to Caucasian?

5 A I said the relationship between race and turnout is
6 pretty weak.

7 Q Did you include this information in your report, your
8 initial report?

9 A Not in my initial report.

10 Q And in your report, actually, you opine that it's more
11 difficult to prevent -- that there are costs involved for
12 African Americans that prevent African Americans from voting,
13 right? We talked about that "C" in your calculus of --

14 A Yes.

15 Q -- turnout? Yet in this blog, you actually conclude that
16 turnout -- the turnout comparison was insignificant.

17 A I said it was pretty weak compared to the stronger
18 relationship between race and support for the three coalition
19 candidates.

20 Q Why did you not include this in your report? You talked
21 about turnout in your report. Why didn't you include this in
22 your report?

23 A My original report I didn't -- don't think I did any
24 estimation of turnout in the Ferguson-Florissant School
25 District.

1 Q Was it your choice to leave this information out?

2 A Yes.

3 Q On page 6 and 7 of your initial report, you talk about
4 turnout. Can you pull that up? You say "Local elections held
5 during off-cycle periods such as in April tend to generate
6 relatively low levels of information about the candidates and
7 produce unusually low voter turnout. In addition, turnout
8 among African-American voters tends to be disproportionately
9 low in off-cycle elections."

10 So you opined generally about low turnout in
11 off-cycle elections such as April, but you didn't choose to
12 talk about specific to Ferguson-Florissant turnout in April
13 elections.

14 A Right. I was referring to several studies in political
15 science that found lower turnout in off-cycle elections
16 particularly among African-American voters.

17 Q But not specific to the district?

18 A No. The only thing specific to the district in my
19 original report was the next page where I looked at turnout in
20 the Ferguson municipal election in 2013 or where I cited
21 estimates from another study.

22 Q From --

23 A Looked at turnout in that Ferguson municipal election in
24 2013.

25 Q But that was to the city of Ferguson, not the

1 Ferguson-Florissant School District?

2 A Yes.

3 Q Did you compare turnout in Ferguson-Florissant School
4 Board elections in April to turnout in Ferguson-Florissant
5 School District voters in November?

6 A In my reports, no. I assumed it was pretty common
7 knowledge that, like in a presidential election, turnout is
8 more like 60 or 70 percent compared to the 10 to 20 percent
9 numbers we were looking at in the April elections.

10 Q But you didn't look at it specific to Ferguson-Florissant
11 School District?

12 A Correct.

13 Q In fact, on these several pages in your report, none of
14 the information that you give is specific to this school
15 district; is that right?

16 A Which pages are you referring to?

17 Q In that section of your report that begins on -- that
18 talks about Senate Factor 3. You don't give any analysis
19 specific to the school district.

20 A In that discussion of Senate Factor 3, I was talking
21 about at large, the at-large system and scheduling elections
22 in April. No. I was citing political science research
23 generally and then the one study that looked at the Ferguson
24 municipal election, 2013.

25 Q Have you examined or analyzed racial turnout

1 differentials in elections held in the district in August or
2 November?

3 A No. I was just looking at the April elections since
4 that's when the school district elections are in the
5 Ferguson-Florissant district.

6 Q So in your initial report, the only -- well, prior to
7 your rebuttal report, the only analysis that you did was for
8 the April 2014 election, and in that analysis you found out
9 that the relationship between race and turnout was weak?

10 A In my original report --

11 Q You didn't include that in your original report, but the
12 only analysis you had done at any point in time prior to your
13 rebuttal report was for the 2014 election. That's specific to
14 this school district.

15 A The blog post I had a -- estimated white turnout was
16 about 6 points higher than African-American turnout. I think
17 that was similar to what I had in the rebuttal report, but
18 that turnout part wasn't in my original report.

19 Q Thank you. Did you examine whether any other of the
20 Ferguson-Florissant School District elections were racially
21 polarized for your initial report?

22 A My initial report for racial polarization I examined the
23 2014. My rebuttal report I examined racial polarization in, I
24 think, the five most recent elections.

25 Q There was a more recent election to analyze, wasn't

1 there, at the time that you did your report?

2 A The 2015 -- yeah. The 2015 election was in April 2015.

3 Q But you didn't include that one?

4 A Not in my original report. It's in my rebuttal report.

5 Q And you did that because Dr. Rodden had done it, correct?

6 A I analyzed more elections in my rebuttal report partly to
7 respond to Dr. Rodden's report.

8 Q So let's talk about how you determined racial
9 polarization. Can you tell me how you analyze that? What did
10 you look at specifically?

11 A I looked at the voting returns by precinct and measures
12 of the racial composition of the voting-age population in each
13 precinct.

14 Q And you only looked at the three candidates in the slate
15 to determine whether or not there was racial polarization,
16 right?

17 A In my initial report, I examined the three candidates
18 running as a slate in the 2014 election. In my rebuttal
19 report, I looked at the five most recent elections.

20 Q Can you just explain why you didn't -- why you only
21 included an election that wasn't even the most recent election
22 in your initial report? Why did you choose the 2014 election
23 to include?

24 A When I wrote my initial report, my understanding was that
25 another expert was reporting on racial polarization, and so I

1 figured when I found evidence from one -- election for racial
2 polarization. So I didn't think I needed to go beyond that in
3 my initial report.

4 Q So you didn't expect the Court to make a decision on
5 whether or not there was racially polarized voting in the
6 Ferguson-Florissant School District based on one election, did
7 you?

8 A It helps to look at more elections than one election, if
9 that's your question.

10 Q Yeah. What sort of analysis did you use when you were
11 considering the 2014 election? What sort of analysis did you
12 use?

13 A In my initial report, I used ecological regression
14 estimates and the homogeneous precinct analysis. In the
15 rebuttal report, I used homogeneous precinct analysis and used
16 the ecological inference estimates from Dr. Rodden's report.

17 Q And, well, you didn't have Dr. Rodden's -- yeah. You
18 used Dr. Rodden's report for your rebuttal report, correct,
19 not for your initial report? Because you didn't have those.

20 A Correct.

21 Q And when you did your homogeneous precinct analysis, you
22 compared precincts that were 80 -- 80 percent majority African
23 American or 20 percent African American, correct? Eighty
24 percent or more or 20 percent or less?

25 A I compared precincts where the African-American share of

1 the voting population is more than 80 percent versus precincts
2 where the African-American share of the voting-age population
3 is less than 20 percent. And I also compared the same
4 homogeneous precinct analysis comparing 90 versus 10 percent
5 cutoff as well.

6 Q When you were looking at racial polarization?

7 A Yeah, in the original report, in the analysis of the 2014
8 elections.

9 Q Why didn't you use King's ecological inference method in
10 your initial report?

11 A My understanding was somebody else was doing racial
12 polarization, and so I thought these two -- these are two
13 different methods. I thought, at least for my initial report,
14 this was enough to make some estimates of racially polarized
15 voting.

16 Q But wasn't King's method developed specifically for use
17 in Voting Rights Act cases?

18 A I think it was developed specifically for ecological
19 analysis cases like this. I think he was motivated at least
20 in part by Voting Rights analyses.

21 Q Could you put up Footnote 4 to Dr. Engstrom's report. It
22 says "This procedure is detailed in Gary King, *A Solution to*
23 *the Ecological Inference Problem: Reconstructing Individual*
24 *Behavior from Aggregate Data*, and is now used widely by expert
25 witnesses in assessing racially polarized voting in Voting

1 Rights cases. On the superiority of EI over ecological
2 regression for assessing differences in the candidate
3 preferences between or among groups of voters which has been
4 relied upon by the Supreme Court in 1986 in *Gingles*, EI was
5 developed subsequent to that case for the explicit purpose of
6 improving these estimates."

7 Did I read that correctly?

8 A I think so.

9 Q Yet you chose not to use ecological inference?

10 A Right. It was my understanding that there was another
11 expert doing that.

12 Q Were you asked not to do it?

13 A No.

14 Q And you used ecological inference in the past, haven't
15 you?

16 A Yes, in one of my books.

17 Q And don't you leave out a whole lot of data when you use
18 homogeneous precinct method?

19 A Yes. I mean, as I mentioned before, the main
20 disadvantage of that is you're leaving out precincts that are
21 more mixed racially.

22 Q How many precincts were left out of your analysis by
23 using homogeneous precinct?

24 A Using the 80/20 cutoff, I think then you're examining
25 maybe 25 to 30 percent of the voters in the district; so

1 you're leaving out.

2 Q And you'll agree with me that most experts use a cutoff
3 of 90 percent and 10 percent, won't you?

4 A I'm not aware of any standard for what most experts do.
5 I think most -- the work I've seen uses somewhere between 80
6 percent and 90 percent as the cutoff.

7 Q Could you please put up Footnote No. 9 to Dr. Engstrom's
8 report, please.

9 "HP analyses are typically based on cutoffs of 90
10 percent and 10 percent, but in this application 85 percent and
11 15 percent are employed due to the small number of precincts
12 that satisfy the 90 percent and 10 percent thresholds."

13 So you see Dr. Engstrom told the reader that he was
14 using a different threshold than what is normally used. Is
15 that correct?

16 A That's what he said.

17 Q He goes on to detail exactly "In the 2011 election,
18 voting occurred in 47 precincts, only two of which were less
19 than 10 percent African-American VAP and four above 90
20 percent. Seven precincts, however, were less than 15 percent
21 and six above 85. Voting occurred in 53 precincts in the 2012
22 election of which there were only two less than 10 percent and
23 five above 90. The numbers of precincts less than 15 percent
24 and above 85 were seven and eight respectively. Voting
25 occurred in 46 precincts in the 2013 election of which only

1 one was below 10 percent in African-American voting-age
2 population and five above 90. Five precincts were below 15
3 percent and seven above 85. Voting in the 2014 election
4 occurred in 47 precincts, only two of which were below 10
5 percent African-American voting-age population and four above
6 90 percent."

7 Do you see that?

8 A Yes.

9 Q Can you get the next page of the footnote? "Whereas
10 seven were below 15 and 8 above 85. Fifty-three precincts
11 were used in the 2015 election, with only two below ten and
12 five above 90, whereas seven were below 15 and eight above
13 85."

14 So Dr. Engstrom was very, very careful to tell the
15 Court, normally, we use 90/10; there's not enough precincts
16 for me to look at using 90/10; so I'm going to lower it to
17 85-15.

18 You lowered it to 80/20, and you didn't tell the
19 Court that that's what you were doing. Is that right?

20 A I told the Court what I was doing. I said where I looked
21 at 80/20, and I explained in my report where I looked at
22 90/10.

23 Q Did you explain in your report when you were using 90/10?

24 A Yes.

25 Q In the text?

1 A Yes. On page 5 of my original report, I say "In
2 precincts with a voting-age population is more than 90 percent
3 African American, coalition candidates receive 70 percent" --

4 THE COURT: It's that reading problem.

5 A -- "of the votes cast for FFSD school board seats."

6 And then in the next sentence I say "In precincts
7 that are less than 10 percent African American, coalition
8 candidates received 19 percent of the votes cast for FFSD
9 school board seats."

10 Q So you said on page 5 of your initial report that under
11 homogeneous precinct analysis, using the 80/20 cutoff, that
12 there are 11 precincts that are more than 80 percent African
13 American and eight precincts that are less than 20 percent.
14 Is that right?

15 A Yes.

16 Q And how many total precincts were there that year in
17 Ferguson-Florissant?

18 A I think you said there were 47.

19 Q Did you include that number in your report?

20 A On the previous page I did.

21 Q And then going on to the next two paragraphs, when you
22 use the 90/10 cutoff, there were only three precincts that
23 were more than 90 percent and two precincts that were less
24 than 10 percent. Correct?

25 A Yes.

1 Q So you were looking at a total of five precincts to make
2 that analysis?

3 A Yes.

4 Q When you used 80/20, you analyzed 19 precincts, correct?

5 A Yes.

6 Q Do political scientists typically make sweeping judgments
7 made -- looking at just tiny, cherry-picked bits of data?

8 A I wouldn't describe this as cherry-picked. I mean, I set
9 out the criteria either above 90 percent share of voting-age
10 population or above 80 percent. I mean, I think in political
11 science in these types of analyses I've seen homogeneous
12 precinct analysis combined with ecological inference
13 estimates, and I've seen other studies that just use
14 ecological inference estimates.

15 Q Let's turn to page 4 of your rebuttal report. In the
16 second paragraph you say "There are many precincts in the
17 school district with similar proportions of black and white
18 adults. However, this poses a challenge for ecological
19 inference and ecological regression estimates of the voting
20 behavior of whites and African Americans." Is that what you
21 state?

22 A Yes.

23 Q Did I read that correctly?

24 A Yes.

25 Q When you say "many precincts have similar proportions of

1 black and white adults," what percentage are we talking about?

2 A Probably be between 40 percent African-American share of
3 voting-age population and 60 percent. We can show it on my
4 earlier graph if --

5 Q Let's look at your rebuttal report. And you switch in
6 your rebuttal report between using a 90/10 cutoff and then an
7 80/20 cutoff, don't you? You switch back and forth.

8 A In Table 2, I did an 80/20 cutoff. In Table 3, I did a
9 90/10, 90 percent and 10 percent cutoff.

10 Q And in the text anywhere, did you tell the reader that
11 you were switching between the two?

12 A Yes. I explained at the top of each table what the
13 cutoff was that I used.

14 Q You simply labeled the table. You don't tell the reader
15 that that's what you've done, correct?

16 A I assume the reader is going to look at the table to see
17 what the cutoff is.

18 Q Could you please pull up Table 3 on page 6. Can we get
19 the whole table? Is there a way to get the whole table?

20 This is a table that you showed -- that you talked
21 about under direct and which you analyzed voter turnout. Do
22 you think it would be significant for the Court to know that,
23 when you did your analysis, you were looking at five
24 precincts?

25 A Well, in 2014 it was five precincts.

1 Q But Dr. Engstrom explains in his report exactly how few
2 that is when you use 90/10; is that correct? We just went
3 through those.

4 A Right.

5 Q It's very few. It's a very low percentage of the overall
6 precincts. Would you agree with me?

7 A Right. As I said before, the disadvantage of homogeneous
8 precincts is you're leaving out precincts that are more
9 racially mixed. The advantage is you're comparing precincts
10 that are heavily white versus precincts that are heavily
11 African American so that the voting behavior observed in those
12 precincts you're more confident that they describe the
13 behavior of the group that's --

14 Q So in Table 3 you used 90/10 to show that they're looking
15 at very few precincts. Table 2 you use 80/20. Is that right?

16 A Yes.

17 Q And in Table 2 you're looking at voting by race, right?

18 A Yes.

19 Q And we get different numbers when we look at
20 approximately 20 precincts or a little bit higher percentage,
21 correct, of the overall precincts -- of voting precincts,
22 right? You're looking at more precincts when you do an
23 80/20 --

24 A Correct.

25 Q -- analysis? And do you believe that, if this report was

1 submitted for peer review, that this sort of switching back
2 and forth between how many precincts your analysis would pass
3 muster?

4 A If I was doing this for peer review, I imagine they would
5 tell me to be consistent or use both an 80/20 and a 90/10
6 split for both analyses.

7 Q But you didn't do that for the Court?

8 A No.

9 Q Was it your decision to use the two different cutoffs, or
10 were you asked to use two different cutoffs?

11 A No. That was my choice. I remember you asking about
12 this in the deposition; so I went back on Table 3 and did an
13 80/20 split to see what the turnout numbers were there.

14 Q But you didn't report that. You didn't amend your
15 report. We don't have those numbers on record, do we?

16 A No. That was after my deposition --

17 Q Right. And you didn't amend your report -- I'm not
18 asking --

19 THE COURT: Slow down. Let him finish. Then you can
20 ask your question.

21 MS. ORMSBY: I just don't want him to put information
22 on the record that hasn't been produced to us.

23 A Right. It was after the deposition; so I had already
24 submitted these reports.

25 Q And you didn't file an amended report?

1 A No. I didn't know that I could.

2 Q And you didn't produce your calculations to us when you
3 did that analysis?

4 A Correct.

5 MS. ORMSBY: Okay. All right. I'd like to turn to
6 another subject. Let's --

7 THE COURT: All right. Well, that's perfect.

8 MS. ORMSBY: Okay.

9 THE COURT: It's five after five. So before we start
10 a new topic, we will take a recess.

11 MS. ORMSBY: Sure.

12 THE COURT: We'll begin in the morning at nine
13 o'clock. How long do you think your cross will go?

14 MS. ORMSBY: Well, Your Honor --

15 THE COURT: I know you can't predict with any
16 certainty.

17 MS. ORMSBY: I'm going to give you as good a guess as
18 I can, but if you don't hold me to it, I'd say I'm halfway
19 through.

20 THE COURT: All right.

21 So who are you calling tomorrow? I assume we slipped
22 a little bit today, but we're still on track. Is that fair?

23 MR. ROTHERT: Yes. We slipped a little.

24 THE COURT: Un petit peu.

25 MR. ROTHERT: We were hoping to start the next

1 witness today but thought we might not get done. So not
2 terrible.

3 So tomorrow Mr. Frank Green, who we were hoping to
4 start today, will be after Dr. Kimball. We think we might
5 have to make a slight adjustment for witness availability.

6 THE COURT: Okay.

7 MR. ROTHERT: But our remaining witnesses are
8 Reverend Willis Johnson, Dr. Engstrom, Redditt Hudson, and
9 Frank Green, and we were hoping to get them all in tomorrow.
10 I don't think that will happen now.

11 THE COURT: So first thing Thursday you should finish
12 and then --

13 MR. ROTHERT: Yes, I think so.

14 THE COURT: All right. Any thoughts?

15 MS. ORMSBY: Well, I'm concerned. I'm concerned
16 about getting done on Friday and --

17 THE COURT: Well, if not, we'll get to start Tuesday
18 morning and finish up or whenever everyone is available. I
19 know you probably didn't plan on it, but without a jury in the
20 box, we'll pick a day to finish. So I don't want anybody to
21 panic, but we'll figure it out.

22 MS. ORMSBY: Okay.

23 THE COURT: All right? Thank you.

24 Thank you, sir.

25 THE WITNESS: Thank you.

(PROCEEDINGS CONCLUDED AT 5:05 PM.)

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CERTIFICATE

I, Shannon L. White, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 205 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 1st day of February, 2016.

/s/Shannon L. White
Shannon L. White, CRR, RMR, CCR, CSR
Official Court Reporter